DOCUMENT RESUME

ED 259 250 CG 018 351

AUTHOR	Gowen, Rebecca P., Ed.
TITLE	Proceedings of the Conference on Juvenile Repeat Offenders (College Park, MD, December 8, 1983).
INSTITUTION	Maryland Univ., College Park.
SPONS AGENCY	Office of Juvenile Justice and Delinquent Prevention (Dept. of Justice), Washington, D.C.
PUB DATE	Jun 84
GRANT	77-JDCP1-7155
NOTE	157p.; Appendix VI is marginally reproducible due to small print.
PUB TYPE	Collected Works - Conference Proceedings (021) -- Information Analyses (070) -- Reports - Descriptive (141)
EDRS PRICE	MF01/PC07 Plus Postage.
DESCRIPTORS	*Adolescents; *Delinquency; *Delinquency Prevention; *Delinquent Rehabilitation; Ethics; Program Descriptions; *Recidivism
IDENTIFIERS	Maryland

ABSTRACT

These proceedings were published to interpret and disseminate research findings to operational personnel working with juvenile repeat offenders; to share information among researchers and practitioners regarding prevention, intervention, and treatment program models and strategies for juvenile repeat offenders; to explore the impact of juvenile repeat offenders on the juvenile system; and to explore ethical and operational issues associated with juvenile repeat offenders. Welcoming remarks are from Dr. Charles F. Wellford, Director of the Institute of Criminal Justice and Criminology; Cornelius J. Behan, Baltimore County Police Chief; Dr. Clementine L. Kaufman, Chairman of the Maryland Juvenile Justice Advisory Committee; Richard W. Friedman, the Director of the Maryland Criminal Justice Coordinating Council; and Rex C. Smith, Director of Maryland's Juvenile Services Administration. Papers include "Implications of Recent Research on Juvenile Repeat Offenders" (Marvin E. Wolfgang); "Dilemmas in the Classification and Treatment of Juvenile Repeat Offenders: The Massachusetts Experience" (Lloyd E. Ohlin); "Juvenile Repeat Offenders and the 'System'" (Allen F. Breed); and a luncheon address by Alfred S. Regnery. Other presentations are included in four panel workshops: "Defining and Identifying the Juvenile Repeat Offender", "Preventing Juveniles from Repetitive Delinquencies", "Legal and Administrative Access to and Use of Juvenile Records", and "The Treatment of Juvenile Repeat Offenders". Closing remarks on "The National Scene" are by R. Thomas Parker. Appendices contain additional information from panel members, materials from Mr. Parker, the Conference Agenda, and a list of attendees. (NRB)

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PROCEEDINGS OF THE CONFERENCE ON JUVENILE REPEAT OFFENDERS

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Institute of Criminal Justice and Criminology
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Maryland Criminal Justice Coordinating Council
Maryland Juvenile Justice Advisory Committee

June, 1984

CG 018351

PROCEEDINGS OF THE CONFERENCE ON JUVENILE REPEAT OFFENDERS

December 8, 1983
Adult Education Center
University of Maryland
College Park, Maryland

Sponsored by:

Institute of Criminal Justice and Criminology,
University of Maryland at College Park
Maryland Criminal Justice Coordinating Council
Maryland Juvenile Justice Advisory Committee

Rebecca P. Gowen, Editor

Support for the Conference and the publication of the Proceedings was provided by the Office of Juvenile Justice and Delinquency Prevention under grant #77-JDCP1-7155 from the Maryland Criminal Justice Coordinating Council. Points of view or opinions stated in this document are those of the Conference participants and do not necessarily represent the official position or policies of the Office of Juvenile Justice and Delinquency Prevention.

June, 1984

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FOREWORD

In 1982, Maryland distinguished itself by holding the first National Conference on Repeat Offenders at the University of Maryland at College Park. Our innovative Repeat Offender Program Experiment (ROPE) was designed by the Maryland Criminal Justice Coordinating Council and its Repeat Offender Task Force. ROPE is now operating in five Maryland subdivisions as a systemwide approach to incapacitating repeat offenders.

Juvenile repeat offenders have also been targeted by ROPE. In 1983, the Conference on Juvenile Repeat Offenders was planned in response to a number of issues that grew out of the early ROPE experience: What constitutes a "juvenile repeat offender?" What are the most recent research findings? How can and should juvenile records be used? These were but some of the questions addressed at the Conference by prominent researchers and professionals in juvenile and criminal justice.

Solutions to the problem of crime committed by the juvenile repeat offender may not be readily forthcoming, but it is through efforts such as the Conference on Juvenile Repeat Offenders that we can begin to identify and clarify the nature of the problem before us and seek potential solutions. Certainly, the Conference promoted a greater sharing of information and ideas on the issue.

I would like to express my appreciation to all those who have worked so diligently at making ROPE a success, and to those Conference Speakers, panelists, and attendees whose concern about the juvenile repeat offender issue is expressed in this Proceedings. Maryland has shown itself to be a state leader in confronting the issue of juvenile repeat offenders in an attempt to reduce victimization and protect the public.

Harry Hughes
Governor

PREFACE AND ACKNOWLEDGMENTS

In planning this Conference on Juvenile Repeat Offenders, we were cognizant of three related issues that needed to be addressed.

- Although the overall delinquency rate is falling (corresponding to a declining juvenile population overall), a small number of juvenile repeat offenders are responsible for a disproportionate number of offenses. In Anne Arundel County, research disclosed that nine percent of the county's juvenile delinquents were responsible for forty-three percent of all arrests for delinquent activity. This supports the findings of other studies of juvenile repeat offenders.

- Because of the diversity of agencies and organizations which have contact with juvenile repeat offenders--law enforcement, courts, Juvenile Services Administration, social services, mental health, schools, advocacy groups--the juvenile justice system has need for greater coordination.

- New research findings and program models, particularly those outside Maryland, frequently have difficulty in reaching a systemwide audience. Recent research on juvenile repeat offenders--causes and responses--is only slowly "trickling down" to operational personnel.

Some other problem issues, such as confidentiality of records and the concept of labelling, were raised at the first National Conference on Repeat Offenders in 1982. In part, therefore, we viewed this Conference as a natural outgrowth of the earlier conference.

The objectives we set for this conference included:

- To disseminate recent research findings to operational personnel who deal with juvenile repeat offenders.

- To interpret these findings for operational personnel so they may improve the system's response.

- To share information among researchers and practitioners regarding prevention, intervention, and treatment program models and strategies for juvenile repeat offenders.

- To explore the impact of juvenile repeat offenders on the juvenile system.

- To explore ethical issues (e.g., labelling, information sharing) and operational issues (e.g., record keeping, waivers) associated with juvenile repeat offenders.

Both the morning plenary session and the afternoon panel sessions of the Conference were designed to achieve these five objectives, as was the publication of the Proceedings.

We received invaluable assistance from the Maryland Criminal Justice Coordinating Council and the Maryland Juvenile Justice Advisory Committee, our co-sponsors for the Conference. Council members Chief Cornelius J. Behan and Frank A. Hall graciously consented to participate in key roles; likewise, Committee members Eddie Harrison, Natalie H. Rees, Alexander J. Palenscar, and Delegate Joseph E. Owens also lent their expertise to the afternoon panels. Dr. Clementine L. Kaufman and Rex C. Smith, who are both Council and Committee members, were particularly instrumental in the planning phase.

We are also grateful for the extensive staff support we received from the Maryland Criminal Justice Coordinating Council, in particular Sally F. Familton, Joyce R. Gary, Rebecca P. Gowen, Laurie K. Gray, Kenneth D. Hines, Jo Ann R. Polash, and Antoinette L. Trunda. Additional staff support came from the Maryland Repeat Offender Task Force, particularly Kai R. Martensen of the Baltimore County Police Department.

Conference logistics were coordinated with the professional assistance of the University's Conferences and Institutes Program personnel. We are indebted to Jim Ziegler, Jim Yackley, and Lynn Yackavell for the smooth functioning of the day's activities.

Those of us who planned and oversaw the organization of the Conference also wish to thank the Conference's speakers and panelists for devoting time from their busy schedules to the knotty problem of juvenile repeat offenders. Our appreciation extends as well to the 300-plus Conference attendees, whose thoughtful contributions, especially in the afternoon panel sessions, enriched the dialogues.

We hope the Conference on Juvenile Repeat Offenders and its Proceedings will serve as a starting point for addressing this significant problem for the juvenile justice system.

Dr. Charles F. Wellford
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and Criminology
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WELCOMING REMARKS

DR. CHARLES F. WELLFORD: Good morning, my name is Charles Wellford. I am Director of the Institute of Criminal Justice and Criminology at the University of Maryland at College Park. It is my pleasure to welcome you here this morning and to convene the Conference.

The focus of this Conference is the topic of juvenile repeat offenders. Beginning in 1980, the state of Maryland has placed considerable attention on the topic of repeat offenders. Last year, at about this time, we held the first National Conference on Repeat Offenders to discuss the work that was going on in Maryland under the direction of the Maryland Criminal Justice Coordinating Council, and to review some of the activities and projects that had begun as a result of those efforts.

One of those projects was being conducted in Anne Arundel County by the Institute of Criminal Justice and Criminology. That project focused on the issue of juvenile repeat offenders, to see if in Anne Arundel County we could come to grips with the definition of that concept, its operationalization, and the identification of likely repeat offenders. Most importantly, we tried to identify the kinds of programs that would be required if we were ever successful in identifying, in an anticipatory way, juvenile repeat offenders. That work continues under the direction of the Juvenile Services Administration's regional office for Anne Arundel County.

As our research on juveniles developed, it became very clear that the issue of juvenile repeat offenders was critical to the topic of adult repeat offenders. So, the idea for this Conference began to develop slowly as we searched for new information, as we identified those sources of information that we knew were critical to advancing our understanding of the problem and, hopefully, our understanding of the most appropriate responses to that problem. This morning's plenary session was organized to review national efforts in research and in the responses to the identification and treatment of juvenile repeat offenders. In the panel sessions this afternoon, we will continue to discuss those findings to see how they might apply to our jurisdictions.

I am very pleased that you are here today, obviously; we have had a very good response to this Conference. The campus, College Park, and the University College, which is the building in which we are located, welcome you and hope that your stay here today is rewarding.

I would like now to present Chief Neil Behan, who will describe in greater detail the efforts in Maryland to address repeat offenders. Chief Behan, as you know, is the Chief of Police for Baltimore County and has chaired the Task Force on Repeat Offenders since its creation by the Maryland Criminal Justice Coordinating Council.

CHIEF CORNELIUS J. BEHAN: Thank you, Dr. Wellford. Fellow panelists, ladies and gentlemen, I would like to join Dr. Wellford in welcoming you to the second conference on repeat offenders, this one directed at juveniles.

The effort and the concern we have for repeat offenders in Maryland goes back several years. In 1980, the Task Force that I chair was charged by the Maryland Criminal Justice Coordinating Council to look at the repeat offender problem in Maryland, to find out what research showed us, and to devise an approach to deal with this problem. We started by looking at the literature, examining works by Dr. Wolfgang, Dr. Wellford, Dr. Peter Greenwood of Rand, and many others. We came to some conclusions with which you are very familiar--you have all read the reports. Let me refer to them briefly.

As we know from being victims or just from reading the research, the repeat offender is a real and worrisome problem that has not been resolved. A small number of these repeat offenders commit a disproportionate amount of the crime. When you look into it, you find felons who have been in our system ten and fifteen times. They have been convicted of robbery, rape, and armed assault, but you find them on the street, and now they murder someone. We find juveniles who have been arrested over and over again in the juvenile and criminal justice systems: in one case in particular, ninety-nine times from the age of eleven to seventeen; that juvenile was committing a burglary a day and going on and on victimizing our citizens. The existing juvenile and criminal justice systems were not handling these repeat offenders. Those findings suggested that more had to be done.

We found that existing career criminal programs in the nation were largely isolated to one agency, or perhaps two. The prosecutor might have a career criminal program, or perhaps the police and the prosecutor might have a program. But that is where it stopped. We could find no program that included other criminal justice components. There were all kinds of "fallout;" we were not addressing the entire repeat offender problem. For example, at no time was corrections involved in any of these programs. This detracted from their efficacy. As a result, the resources and energies put into these programs often ended up in strong prosecution efforts but lacked appropriate sentencing, incarceration, and treatment efforts. Realizing this deficiency, by early 1982 we devised ROPE, the Repeat Offender Program Experiment; by mid-1983, after much planning, five subdivisions in Maryland began operating under the ROPE concept.

There are certain concepts and principles that guide the local ROPE efforts. One is that the traditional coordination and cooperation that usually occurs between various justice agencies is not enough. We have to collaborate; we have to work together to the degree that we have to subjugate our own mission, our own goals, to keep in mind the prime mission, which is to do something about the repeat offender. It means giving something up; it means facing the problem and working out a solution. It means doing whatever is necessary to do something about the repeat offender. This collaboration is essential. This process, which by its nature is still kind of strange to us, must continue.

Another principle we espoused is that, in a democratic society, you need the support of the political leadership. There is no way you can get anywhere in this country unless the people who lead us, who are elected to high office, are involved. With that idea in mind, we asked the Governor of Maryland to be the leader, if you will, of the ROPE program. We asked

the Governor to bring all agencies together to work on this problem. He provided that leadership. He wrote to and secured the help of the Mayor of the City of Baltimore and the County Executives from the four other subdivisions. They, in turn, are providing support. Now, in addition to the State Task Force, each subdivision has a Repeat Offender Steering Council comprised of administrators from all components of the justice system. All are dedicated to the one goal: the effective handling of the repeat offender.

We also came to the conclusion that the definition of the repeat offender should be flexible. Each subdivision has its own repeat offender problem. It seemed rather offensive to us at the state level to dictate what each subdivision's problems were. So we asked them to come up with their own definitions. We in effect asked: "Which people in your community have to get special treatment to help keep your community safe?" Interestingly enough, a number of the subdivisions' definitions centered on Maryland's statute providing mandatory sentences for subsequent offenders. Article 27, Section 643B, mandates twenty-five years without parole for a defendant having three prior convictions and one prior incarceration for crimes of violence. This was a convenient law for defining ROPE candidates. While some definitions went beyond, it certainly was a good starting place.

Another principle we agreed on was that the targeted repeat offender population should be of manageable size. You can not go after everyone; you have to be selective and include only those to whom you can give special attention within the limits of available resources. The repeat offender population should be carefully selected.

We also realized that planning and implementation would take a considerable amount of time. In other words, we have to be patient with ourselves. We estimated when we got ROPE launched that it would take about five years to get the program up and running and truly effective. Well, the five years are not up, but we are already showing some very positive effects.

For example, in Baltimore County, where ROPE has been operating now for nine months, we have identified some eighty-eight people who are potential ROPE candidates. Of those eighty-eight, fifty-seven were verified. (Verification is difficult in this state; to get the kind of records necessary as evidence to prove the criminal history background of these repeat offenders, you have to go all over the state and even throughout the country in some cases.) Of these fifty-seven verified repeat offenders, twenty-two qualified for 643B enhanced sentences if convicted. As of this moment, seven have received the mandatory twenty-five years without parole. In the previous four years, I do not believe there were many more than seven people in the entire state of Maryland who received 643B mandatory sentences. Here, in one county in less than one year, we have already equalled that number because of ROPE.

Baltimore City, in its first six months in ROPE, has identified some ninety-five defendants who are repeat offenders. Half have already been sentenced to the state's prison and, of those, most were violent offenders. Howard County, too, has identified defendants for special treatment and at this point has sentenced one to 643B's twenty-five years without parole.

So ROPE has started. The momentum is there. I see the beginning of success. It is probably one of the most encouraging and finest things I have ever seen in law enforcement. However, we have not finished. We are not there yet; we have a long way to go. We are here at this Conference ready to take another step. We are now talking about the juvenile repeat offender. We are talking about the kinds of efforts that are necessary to address this problem.

As research has shown us, many adult repeat offenders started as kids. The critical ages for repeat offenders are between fourteen and twenty-four. For us to ignore this phenomenon does not make much sense. Dr. Wellford's ROPE research in Anne Arundel County replicated the early findings of others. He found that repeat offenders start early, they repeatedly victimize as juveniles, and then they become adult offenders. It is for that reason that ROPE includes juveniles in its experiment.

There are several critical areas for us to discuss today and, in the months to come, we have some very serious problems to face. Naturally, one problem is the fact that we are changing gears, we are doing something different from what we have done in the past.

Early identification of repeat offenders is a serious problem. We do not know precisely, yet, how to identify the youngster who is going to victimize repeatedly. We do know that most youngsters who fall on erring ways straighten out after the first contact with the system, or they straighten out because of a parent or a teacher. Most children are corrected for a variety of reasons. The repeat offender child, on the other hand, is not corrected by the system as we know it. The trick is, how do we identify them early enough to be effective?

Our insistence upon early identification scares some people because it sounds like we are intending to be oppressive. We are not. However, we believe that early identification will give us a better chance to change that child. We believe strongly that early identification can bring about rehabilitation. We believe we can successfully rehabilitate the child before the child is hardened, before he has been through the system and has been desensitized by frequent and ineffectual contacts with the law. This is very, very important.

The second problem we have to face is when this juvenile repeat offender becomes an adult offender. At this time in Maryland, even if a person has had an alarming career as a juvenile repeat offender, that record becomes "clean" and he starts all over again when he steps into the adult criminal justice system. Often the juvenile delinquency record is not available at the time of sentencing. So here we have this adult, who has had a frightening record for burglary, robbery, and auto larceny, but who is sentenced by the judge as though he has just committed his first offense, and has not been through the justice system before.

We really have to look at juvenile records and see how they can become a part of the justice process. We need to carry these records into the adult system so that proper decisions can be made. We have to be realistic about this. You have to understand that we are talking about the juvenile

repeat offender who has been through the system so often that he laughs at us when he sees us; he does not really believe that the system does anything for him or to him.

There are not many juvenile repeat offenders, but there are enough to hurt us and we want to concentrate on them. So, underlying everything we discuss here today is the commitment we have in ROPE to see that this juvenile repeat offender commits no more crimes, by whatever method we believe fair.

It is now my pleasure to introduce the next speaker, Dr. Clementine Kaufman. She is working with us as a member of the Criminal Justice Coordinating Council in Maryland. She is a volunteer who is involved in every part of the law enforcement business that needs help or needs counselling. She has been a member of the Johns Hopkins Metro Center; is the chairperson of the Juvenile Justice Advisory Committee; is a good friend of mine; and is a lady I like to work with because she has the best interest of the community and law enforcement at heart.

DR. CLEMENTINE L. KAUFMAN: Thank you very much. Ladies and gentlemen, it is a privilege to see all of you here and to welcome you on behalf of the Juvenile Justice Advisory Committee. If it were not for the Juvenile Justice Advisory Committee, you would not be here, and I would not be here, because it is through the Juvenile Justice Advisory Committee that the grant funding for this Conference came to this state.

I would like to take this opportunity to discuss the Juvenile Justice Advisory Committee and its functions. The Committee is created by the Governor; all its members are appointed through the Governor's office. It is made up of about nineteen citizens, people professionally involved in the juvenile justice system and in related systems. On the committee are individuals representing a variety of points of view: we have a chief of police, we have a sheriff, social workers, and, most importantly, people who care about youngsters across the spectrum of the points of view that exist and relate to juveniles in our society today. Sometimes it is very hard to reach agreement or consensus on the committee, but it is a challenge and I think everyone who serves has found it an extraordinarily interesting and vital experience.

I am thrilled that so many of you are here today in response to the issues we are discussing: the serious and the violent juvenile repeat offender. While this is of major interest to all of you here, there are other areas in the juvenile justice system that are equally important. You cannot just look at one small piece of the juvenile justice system, because the system is far bigger. It starts, first of all, with concern for prevention. Prevention goes with better schools, with stronger families, with happier and healthier citizens. It ends with a youngster who graduates into adulthood as a productive member of our society. This is the responsibility of the juvenile justice system and, in a way, the responsibility of the Juvenile Justice Advisory Committee, in terms of those young people who are in trouble in our state. The juvenile repeat offender is a serious problem, but it is only a piece of the system. When we have another conference, I hope we will have even more people here because there is a great deal of work to be done.

I want to talk just for a minute about our concerns vis à vis the juvenile repeat offender. There is a challenge to this Conference today in terms of that aspect of the juvenile justice system. The challenge goes in four directions, as I see them. One is to clarify terminology and definitions. You heard Chief Behan describe the five ROPE efforts across the state. I think Baltimore City has one ROPE definition, and I suspect Montgomery County has another. We need to clarify this to preserve the rights of the individual juvenile, as that juvenile comes into our system. We also need to define the issue of records and how records will be used vis à vis the juvenile offender and his problem. We need to know who will have access to records and at what point in the system the access to the juvenile's records will be available.

The second, and I think equally important, area is to define the legal terminology we are using and to raise the legislative issues, because, as our present statutes exist, there may need to be changes and we need to alert the legislature. I hope those members of the legislature who are here will listen and think about how our laws could be clarified.

Thirdly, we need to examine why we have this repeat offender problem--there will be a panel on that topic this afternoon--and what we can do to prevent youngsters from going in that direction. And finally, we need to try to develop some answers to the problem of juvenile repeat offenders. We need to look at a major research effort in every one of these areas.

So, I add my welcome to those of Chief Behan and Dr. Wellford. I think we are in for an extraordinarily exciting day. I hope to have a wonderful product out of this that we can use to meet Maryland's effort in solving this problem.

It is my pleasure now to introduce the Director of the Maryland Criminal Justice Coordinating Council. He has one of the most challenging jobs in the state, and also one of the most important ones. It is always a privilege, and with pride I present to you Mr. Richard Friedman.

MR. RICHARD W. FRIEDMAN: I welcome you on behalf of the Maryland Criminal Justice Coordinating Council. This morning's program is devoted, as Dr. Wellford has said, to research findings. Our luncheon speaker, who we are very pleased and privileged to have, is the Director of the federal Office of Juvenile Justice and Delinquency Prevention in Washington. He will be with us throughout lunch but will not be able to stay for the rest of the day; nevertheless, we are certainly appreciative of his attendance. I would like to thank the Office of Juvenile Justice and Delinquency Prevention for the funds to support this Conference.

At this time, I would like to introduce Rex Smith, who is the Director of the Juvenile Services Administration in Maryland. He is a member of the Juvenile Justice Advisory Committee; a very active member of the Criminal Justice Coordinating Council; and a leading figure in the juvenile justice community in Maryland and throughout the country.

MR. REX C. SMITH: Thank you, Richard. I just want to take this opportunity to welcome many of my own staff who are here from the Juvenile Services Administration and also all those who have come out here this morning for a juvenile justice topic which, more than any other recently, has captured the imagination and the creative juices of a whole lot of us in the United States.

We have been around in the business for quite some time, and as I look out at the audience I see my mentor, Professor Peter Lejims, and also Lloyd Ohlin up here and Marvin Wolfgang. Over the last many years, I have read and been a student of theirs with regard to the juvenile justice and delinquency field. I do not think we know any more now by virtue of Peter Greenwood's studies on the subject of predicting in the criminological field (with regard to repeat offenders) than we may have learned in our own setting. Well, we are doing some things differently about them, the small numbers who create an awful lot of trouble for all of us and tend to "drive" the field of juvenile justice. I appreciate the remarks of Clem Kaufman with respect to the overall field of juvenile justice.

It has been my pleasure as Executive Committee Chair of the Maryland Criminal Justice Coordinating Council to work with Chief Neil Behan, along with others, on the Repeat Offender Program Experiment. It has also been even more pleasurable for me to work with my own staff throughout the state of Maryland, in addition to those five ROPE jurisdictions. We have done an awful lot of work in this area, putting together some rather special programs for the repeat offender, focusing on identification and treatment considerations. Again, these are things that have not just happened today, but have happened over the years, in recognition of this very special population which requires some very special attention. All of these juvenile justice and criminal justice problems operate within a social, economic, and political context. Certainly the political context is very important to us and is some of the reason we are here today, because this particular topic, the repeat offender, has captured the imagination of those people in that arena as well. I suspect that we will see, three or four or five years from now, after we have done as much as we can possibly do to attack this problem, that people will be talking about whether to have a national conference on juvenile delinquency prevention.

All of that is to the good and all of that keeps us on our toes with respect to making sure we are doing as much as we possibly can in this field. I do feel that the topics we are going to discuss today are vitally important. The extent to which the Repeat Offender Program Experiment type of technology, mentality, and positioning affects and has applications for the juvenile justice system is very important. This is a very special field with very special considerations, both legal and political. I, again, am delighted all of you are here today to discuss those kind of things that have serious implications for the children of this state and of the United States.

IMPLICATIONS OF RECENT RESEARCH ON JUVENILE REPEAT OFFENDERS

DR. CHARLES F. WELLFORD: If I were to introduce thoroughly and completely the next three speakers who are to speak in the course of this morning, it would take me all morning. When we sat down to plan this Conference, we asked ourselves: "Which three people would we like to have talk about research activities, the response to repeat offenders, and the problems of the juvenile justice system?" Three names came to the top of the list: Marvin Wolfgang, Lloyd Ohlin, and Allen Breed. Thanks to their generosity and cooperation, they are here with us this morning and it is my privilege to introduce them to you.

Our first speaker, Marvin Wolfgang, is, as you know, from the University of Pennsylvania. The works that have really laid the foundation for much of the efforts around the country focusing on career criminals and repeat offenders and certainly, as Chief Behan mentioned in his opening remarks, for our efforts in Maryland, emanate from the Center for Studies of Criminal Law and Criminology at the University of Pennsylvania, under the direction of Dr. Wolfgang and Thorsten Sellin. I am sure you are familiar with his book, with Thorsten Sellin, The Measurement of Delinquency and, more directly on target for this Conference, Delinquency in a Birth Cohort, which was published in 1972. The book set the standard for longitudinal cohort-type research in the United States. Since then, Professor Wolfgang and his colleagues at Pennsylvania have continued their research on delinquency, in particular using the cohort approach. We are honored and obviously very pleased to have him here with us this morning to discuss his research and to address the implications that he sees of that research for our efforts to deal with juvenile repeat offenders.

DR. MARVIN E. WOLFGANG: Distinguished members of the panel and dear friends. This is a conference on the juvenile repeat offender. I am sure many of the things I am going to say in this brief period of time--I say "brief" because I am used to three-hour seminars--will not be new to many of you. I do hope there is at least one person in the audience who never heard of the word "cohort." It is a term we have borrowed from demographers. A birth cohort is a group that was born in the same year and is followed through its life histories simultaneously. I intend to be descriptive rather than prescriptive. But toward the end of my time, I shall, not with courage but with hesitancy and some ambivalence, be a little bit prescriptive.

The number of juveniles, or persons under eighteen years of age, who are arrested for recognized serious Index offenses, from criminal homicide to motor vehicle theft and arson, has increased around 140 percent between 1963 and 1980. But the number of juvenile arrests for violent offenses, that is, homicides, forcible rapes, robberies, and aggravated assaults, has increased 300 percent during the same period of time. Now these are substantial increases, and most of us know about them, despite the fact that there has been a stabilization, and even a slight decline, in juvenile violent crime

between 1976 and 1982. For example, juvenile arrests for violent crimes increased by only 2.5 percent between 1976 and 1980, while adult violent crime, eighteen and over, increased by nearly twenty percent. And by 1980, the number of juvenile arrests for violent crime even decreased slightly to around two percent. To put it in another perspective, most serious juvenile delinquency involves property crimes rather than offenses against persons. In 1980 and 1981, juveniles accounted for around forty-five percent of the arrests for burglary and motor vehicle theft, thirty-eight percent for larceny, and forty-five percent for arson. Among arrests for violent crimes (the homicides, rapes, robberies and aggravated assaults), juveniles account for under twenty percent.

There was a dramatic increase, as most of us know, in violent crime beginning in 1963 throughout the United States, at least according to the police reports we have from the 15,000 jurisdictions which send monthly reports to the FBI. And there was a consistent increase, what the statisticians would call a monotonic linear increase, mainly due--apparently, from all the best of the multivariate regressions we can do--to the increase in the composition of our population aged fifteen to twenty-four. These are the years of the greatest propensity towards violent behavior. The baby boom, the highest fertility rates in our history, occurred in 1946 through the late 1950s and swelled the teenage and young adult proportion of our total population. Hence, the high rates of violent crime.

In addition, there is the phenomenon of juvenile gangs that we have experienced. We know, on the basis of numerous studies, that gang membership is very significantly and positively related not only to juvenile arrests but to juvenile self-reported crimes and particularly to juvenile violent crimes. There was a particular viciousness to juvenile gang warfare in the 1960s. Internecine wars occurred as a result of gang killings as well as attacks on unsuspecting adults. Desensitized by the injury inflicted on victims, these gangs had full support for immunity from feelings of guilt. They grew up with what I and some of my colleagues call a "subculture of violence," in which the participants thought their resort to physical violence was not only tolerated but even encouraged. And with this subculture, young boys and men fight and rob and kill and rape without any guilt feelings. They are mostly found in the larger cities, in underprivileged, poorly educated, and economically impoverished areas. They have been there for generations, and transcend different political parties and administrations. They are the products of a society not well-geared to protecting the poorest among us, whatever the political party in power.

It is not simply that violent crime in the United States has increased over the past eighteen years because of the swelling of the fifteen to twenty-four year age group. Juveniles themselves have become more violent over the years. And here, I will begin to refer particularly to our longitudinal studies. The cohorts Sellin and I were working on for The Measurement of Delinquency back in the early 1960s alerted us, as students of juvenile delinquency, that the true index of delinquency or delinquents must be based on an assessment of conduct during the entire time that juveniles are subjected to the law, because indices based on annual data give no hint as to the number of juveniles who become delinquent before they reach adulthood. We suggested that a study of the delinquency history of birth cohorts could

provide a test of the relative value of preventive action earlier, by investigating changes in patterns of delinquent conduct, reduction of recidivism, and so forth, in successive age cohorts as they progressively come under the influence of such programs.

Let me remind you that cohort studies, longitudinal studies in general, have methodological advantages for making causal inferences regarding particularly the sequences of events in the life history of the subjects. When Hirschi and Selvin discussed the problem of causal order long ago, their criterion for judgment claimed that one variable causes another; they suggested that a solution to the problem, at least in principle, is the longitudinal and balanced study. They said that, in an ideal version of this design, an investigator would select a sample of children and continually collect data on them until they became adults. There are remarks I could quote from my colleagues in England, Donald West and David Harrington, as well as other colleagues in this country. We have come to recognize that longitudinal studies are especially useful in studying the course of development, the natural history, the prevalence of those phenomena at different ages, how the phenomenon occurs, what the continuities and discontinuities are from earlier to later ages. They allow us to talk about "age of onset" of delinquency, the transition from one offense to another, the end of a juvenile or delinquent or criminal career. There is an abundant number of virtues and values in such studies.

Now, let me make a comparison between our two cohort studies; I shall affectionately refer to them as Cohort I and Cohort II. The first study, Delinquency in a Birth Cohort, involved all males born in 1945, who resided in Philsdelphia at least from age ten to eighteen (at eighteen they terminate their juvenile court status). Through the use of school, police, and Selective Service files, the Center for Studies of Criminology and Criminal Law at the University of Pennsylvania later tracked down their histories for purposes of determining how many were ever arrested for any act of delinquency. This simple question had not previously been answered with much precision, namely: What is the probability that an urban male will be arrested at least once before reaching age eighteen? Our Center now is currently performing a replication of Cohort I, by tracking all persons--including, this time, females--born in 1958 and who lived in Philadelphia at least between ages ten and eighteen. We are applying the same kind of research methods and analyses for Cohort II as we did for Cohort I. The first study was supported by the National Institute of Mental Health; the Cohort II study has been funded by the Office of Juvenile Justice and Delinquency Prevention. Boys in Cohort I reached their adulthood in 1963; Cohort II boys finished their juvenile period in 1976. They are thirteen years apart. It is important to mention that the administration of juvenile justice and law enforcement in Philadelphia generally remained consistent during the critical years for both groups, so that any changes, any differences that occurred between these two cohorts, we think, are indeed cohort effects rather than any effects that could have been imposed on them by reason of a differential administration of juvenile justice. Juveniles in 1981 accounted for thirty percent of persons arrested for Index crimes in the United States, twelve percent of homicides, thirteen percent of rapes, forty-nine percent of robberies, fifteen percent of aggravated assaults, thirty-one percent of burglaries, thirty-one percent

of larcenies, and thirty-four percent of motor vehicle theft. That is the general United States picture at this point.

Without burdening you with too many statistics, let me just mention the general setting of these two cohorts. Cohort I (in round figures) had 10,000 males. Of these 10,000 males, 3,500 had at least one arrest before reaching age eighteen. This was a surprising figure to us, because my colleagues and I had estimated that probably five to ten percent of the cohort would have had one arrest. In 1958, Cohort II contained about 28,000 subjects, almost equally divided between males and females. There were 6,500 delinquents, which is approximately thirty-four percent of the birth cohort among the males committing any delinquency who were arrested at least once. Altogether, they committed 20,000 offenses.

(Research of this sort takes an enormous amount of time; it is tedious and laborious because not only do we have to ferret out all the names, we have to check with the juvenile agencies, we have to check the offense reports once we get them, we have to read them--some of our graduate students have probably read more offense reports than most police officers--and we have then to score them on the basis of seriousness of offense according to our scoring scheme.)

I wish to emphasize the fact that the prevalence rate, that is, the proportion that ever had a delinquency record, is not different between these two cohorts: thirty-five percent in Cohort I, and thirty-four percent in Cohort II. There is no difference in the proportion of boys who become delinquent, if having one arrest is indeed to be denoted as becoming delinquent.

But, what is most significant in the comparison between these two cohorts is that the incidence is greater. Namely Cohort II committed about five times more offenses in general than Cohort I, and are committing nearly three times the number of violent crimes than were committed by members of Cohort I. We have found, in looking at those who are recidivists, that there are no significant differences, here again, between Cohort I and Cohort II. For example, Cohort II shows that there are slightly fewer one-time offenders than in Cohort I (about thirteen to fourteen percent one-time offenders compared to sixteen percent in Cohort I); an almost identical proportion of recidivists (eighteen percent are recidivists out of the entire birth Cohorts I and II); and almost the same proportion of what we call chronic offenders, those who have been arrested five or more times before reaching age eighteen (six percent in Cohort I and a little over seven percent in Cohort II).

So these general overall statistics present us with no significant differences in the proportion of persons who are one-time offenders, recidivists, or chronic offenders. The race differences remain substantially the same, with one or two exceptions. In Cohort II, we find that among property repeat offenders the disparity between whites and non-whites begins to disappear. And with the frequency of repeating offenses, the disparity almost disappears altogether among property offenders. This is quite different from Cohort I, where the racial disparity continued from first offense to the fifteenth offense. And as the frequency of offending increased, the racial disparity increased. Not so in Cohort II. It appears that non-whites almost have a three to four times greater rate per 1,000 of offending in Cohort II than did whites. Once the white male steps over

the threshold from law-abiding to law-violating behavior and at least gets arrested, with the frequency of repeating, the white offender gets to look in every respect exactly like a non-white offender for all property offenses.

This is not the case with violent offenses. With respect to serious assaultive offenses, the race differentials are very pronounced. For the 1945 birth cohort, non-whites had rates five times higher than whites for homicide, thirteen times higher for rape, twenty times higher for robbery, and eleven times higher for aggravated assault. And the race effect in the 1958 birth cohort, although diminished, still has considerable differences in the assaultive offenses. In Cohort II, non-whites had eleven times higher rates for homicide, ten times higher for rape, eleven times higher for robbery, and four times higher for aggravated assault. In Cohort I, the offense rate for non-whites is about fifteen times higher, in general, than for whites. In Cohort II, non-whites had a lower violent offense rate, that is, only seven times higher that of the whites. In short, non-whites in Cohort II have become twice as violent as non-whites in Cohort I. But whites have become four times more violent in Cohort II than Cohort I. In general, both whites and non-whites have increased their violent, assaultive, repeating offensivity--but the whites have increased their assaultive,violent behavior twice that of non-whites.

There are many things that we have been examining with respect to the escalation of offenses. You raise the question: With the frequency of offending, from the first to the second to the third to the nth offense, do the offenses become more serious over time? Or do they become more serious with age? Those two variables get very complicated. The modal age for juvenile offending is sixteen. The age of onset in Cohort I was fourteen years and in Cohort II it was slightly under fourteen years of age. The age of beginning a juvenile career is just slightly lower for Cohort II but the age of beginning a juvenile career as a violent offender is lower by two years, thirteen years old instead of fifteen for Cohort II over Cohort I. But once having begun a juvenile arrest record, do the offenses increase over time? In severity, in gravity? The answer to that is yes, slightly, but not statistically significantly so.

One of the reasons, apparently, for not having a significant escalation in the gravity and seriousness of crime over time, whether one begins at thirteen or one begins at sixteen, is that there is no specialization in the types of offenses that are committed by repeat offenders. Specialization--that is, burglary after burglary after burglary, ninety-nine robberies, ninety-nine burglaries--in the same individual is an extraordinarily unusual event. In the aggregate, there is no such specialization and these juveniles weave in and out, from Index to non-Index offenses. The highest probability that the next offense will be non-Index, meaning none of those serious crime Index offenses the FBI lists (no injury, no death, no damage, no combination), is another non-Index offense. The probability is about .46 that the first offense a juvenile commits will be a non-Index one; that non-Index offense can include drug offenses, but is more commonly, at least in our earlier studies, status offenses. The probability that the second offense, the fifth offense, the tenth offense will remain a non-Index offense still ranges from .40 to .50. The same is true with respect to the other types of offenses, the more

serious ones. For example, the probability that the first offense a juvenile commits will be a violent, assaultive offense is only .07, fairly low. But the probability that he will commit an injury offense as a fifth offense is also about .07. There is no specialization.

In the absence of specialization, in general, as related to the absence of severe escalation in the gravity of offending, we do know that as children get older, as persons get older, the offenses they commit become more serious, however. In Cohort I, we had a follow-up study in which we interviewed as many of the ten percent random sample as we could find. As one part of the study, we interviewed them at age twenty-five and we hope to do the same with Cohort II. One of the things we were particularly interested in was the continuation of delinquency into adult criminality, along with an interest in why people desist, why people stop. We now have records for our ten percent sample up to age thirty in Cohort I. Remember that the chronic offenders in Cohort I were only six percent of almost 10,000 boys--to be more precise, 627 out of 10,000. These are the chronic offenders, the violent few who commit most of the offenses. They committed 5,300 out of the 10,000 offenses. They committed three-fourths of the homicides, three-fourths of the forcible rapes, and two-thirds of the robberies and aggravated assaults and burglaries. It is that small cadre that is committing many, many violent offenses. When we traced through the ten percent sample up to age thirty, we found that the chronic offenders now, instead of being only six percent, become 14.7 percent of the birth cohort. Some of these we call "late chronics," because they only had three offenses before age eighteen and they picked up two or more after age eighteen. That distinguishes them from "early chronics," who had their five arrests at least before age eighteen. So chronicity is a problem that continues into adulthood. Nearly nine out of every ten adults in our longitudinal studies up to age thirty who were arrested as adults had been arrested as juveniles. It is a rare event for a person to enter adulthood as a criminal without having a juvenile record. In our particular study, only twelve percent were arrested as adults without a juvenile record. We anticipate, or at least we hypothesize similarly, this situation for Cohort II.

I should like to emphasize also that, despite the fact that thirty-five percent of our original Cohort I and thirty-four percent of Cohort II have been arrested at least once before age eighteen, sixty-five percent and sixty-six percent are kids who did not get into trouble. They may have committed a lot of delinquencies for which they were never arrested, but that is another story. Most kids are good kids. Most kids are not bad, repeat, violent, nasty, brutal. We often talk about this and will concentrate on it at this particular Conference. Forty-seven percent in Cohort I, forty-two percent in Cohort II have only one arrest, and they desist after that. We never hear from them again in the juvenile justice system. About thirty-eight percent stop after the second offense, about twenty-eight percent stop after the third offense, and that figure, the twenty-eight percent, continues on after the fifth, the tenth, out to the fifteenth offense. So there is a stability even in desistance after the third offense. This is one of the reasons we were led (even in the first book and I suspect we will in the second book with more elaboration) to make one of the few policy implication statements, namely: There is a kind of spontaneous remission that

occurs in juvenile delinquency after the first and second offense and perhaps a major policy of non-intervention is as good as any. Perhaps we should concentrate our finite resources of talent, time, and money on those who become serious offenders after the third offense. As a matter of fact, the first and second offenses that are committed even by later repeat offenders, chronic offenders, are usually very trivial and they are released to their parents. In comparison, Cohort I to Cohort II, thirteen years later, it is not that there are more persons with a delinquency record in the later cohort, but Cohort II, growing up in the late 1960s and early 1970s, simply committed more crimes and much more serious crimes.

Some policy conclusions can be made that are inferences drawn from the statistics. Persons aged fourteen and over, according to common law and according to some recent research in child moral development and psychology, are capable of understanding the nature of what they have done and of understanding the difference between right and wrong. The New York State reduction of the juvenile court statute age from eighteen to sixteen is not unreasonable. Reducing the juvenile statute age from eighteen to sixteen can indeed increase the volume of criminal court business and perhaps increase delays, but I think there are signs of an intellectual rationale for such a reduction that is realistic and justifiable.

I mentioned before that age sixteen is the modal age, the single age, at which most offenses occur. It is the modal age for committing and being arrested for acts which, if committed by adults, are called crimes. Now, these are not just juvenile status offenses, such as truancy, running away from home, and incorrigibility. It is thought by more than a few practitioners with whom I have talked that juveniles who are arrested for serious, violent offenses should have fingerprints on file for future use. Although a first arrest for a violent crime is rare, as I have indicated, and although a first arrest for a violent crime does not predict future violence well (since most juveniles do not persist in violent criminality), nonetheless, it seems reasonable that the juvenile and adult criminal justice systems should be able to maintain a more efficient tracking system through better record keeping than we currently have. As has been mentioned many times before and has been mentioned here already, persons who reach age eighteen and are convicted of any crime should have their juvenile records made available to the sentencing judge in a criminal court. I mentioned that eighty-eight percent of persons in their twenties who have an adult conviction record have had a juvenile record. At present, most jurisdictions consider a convicted person of age eighteen to be a "virgin offender." The juvenile record for most persons convicted as adult offenders is most likely to be a record of recidivism, especially for a chronic offender. One of the major conclusions that may be drawn is that the many career criminal programs around the country that define a career criminal only in terms of serious repeated crimes committed after age eighteen are functionally at the tail end of a much larger animal. The criminal justice system that expunges, or closes, a serious chronic juvenile record in a criminal court, that permits serious recidivists to be reborn with a virginal record upon reaching their eighteenth birthday, is failing to protect society from persons whose behavior has already manifested a criminal career chronicity of felonious assault or activity.

These serious, chronic juvenile offenders, I think, should be handled in criminal and not juvenile court. A suggestion to eliminate juvenile court has been made in several quarters, but the continued concerns of children under age sixteen would have to be handled through family welfare courts. The suggestion to abolish the juvenile court involves use of the criminal court for serious offenders and youths aged sixteen and over, where they would have the protection of the Constitution and all the legal rights that are offered to such persons who commit serious acts. I think that both the offender and society would be better protected, better deterred, and be given more justice based on the "just deserts" model. The model of "just deserts," that is, punishment proportionate to the seriousness of the crime, is one many of us think should prevail. "Incapacitation" means severe restraint, usually but not necessarily in prison, as a specific deterrent to prevent further criminality by individual offenders and as a protection of innocent members of society. These are the two major rationales for punishment that are unrelated to rehabilitation. If a person so incapacitated is reformed, or if others are deterred, then these are luxury addenda to the primary goals.

Unfortunately, there is no facile way to make a determination to imprison a person as a just penalty from any utilitarian point of view. There is compelling evidence that incarceration, and particularly incarceration of juveniles, can cause systemic psychological damage. Evidence and logic suggest that juveniles, even persons aged sixteen to eighteen, should not be incarcerated with older persons, even in detention awaiting trial or in prisons after conviction. Although it can be argued that judges correctly screen youths for incarceration on the basis that they are more likely to commit future crime, this argument is virtually rebutted by the claim that the experience of incarceration, especially of mingling with adults, encourages further delinquency. We concluded from the first cohort study that not only did a greater number of those who received punitive treatment, by which we ordinarily mean institutionalization, continue to violate the law, they also commit more serious crime with greater rapidity at a more accelerated rate, when we looked at the months inbetween offenses, than those who experienced a less restraining contact with the judiciary and correctional systems. So we concluded that the juvenile justice system, at its best, has no effect on subsequent behavior of adolescent boys, and, at its worst, has a deleterious effect on future behavior. I believe that offenders convicted of non-violent offenses should be punished for what they have done, but should not be subjected to the severe sanctions of imprisonment. All forms of community alternatives, including public service and restitution of victims, should be used instead.

Most non-violent offenders do not graduate into violent crime and neither age nor frequency of offending predict violent criminality. Chief Behan talked about identifying these persons early, so we can prevent their future criminality, so we can treat them at an early age when they are still pliable. Unfortunately, we cannot. We have not been able to identify future violent criminals with any great success. As most of my colleagues would tell you, the best predictor of future violent behavior is past violent behavior, but then the violence has already been done.

I think our policy of criminal justice should apply to all persons aged sixteen and over. Namely, if the crime is seriously violent, the defendant

should be incaracitated for purposes of social protection. Imprison the violent offender, but based solely on the seriousness of the violent crime, not on the basis of personality. This is the most just, because it is the most equitable. If most violent offenders are between ages fifteen and twenty-four, as they are, and if the general social system contributes to violent crime, then efforts should be made to reduce their violence. Nonetheless, social protection as a rationale suggests that, in an imperfect society, we must hold assaultive criminals responsible and protect ourselves against their offending behavior by imprisonment, if necessary.

My final remark is to repeat that repeat offenders are small in number and large in the volume of criminal offenses. We should be able to concentrate on the cadre of serious violent offenders, and continue in the search and in the research to identify those persons as quickly as possible without performing any of the serious stigmatization that might go with it. From the point of view of the victim, it appears there is more juvenile crime than ever before. But the prevalence rates in our two cohorts show that that is simply not true. There is a big difference between 1,000 juveniles each committing one crime--1,000 crimes--on the one hand, and 100 juveniles committing 1,000 crimes, on the other hand. It is the latter that we face. And it is the latter that presents us with the greatest challenge for handling this small number of juvenile repeat offenders.

DILEMMAS IN THE CLASSIFICATION AND TREATMENT OF REPEAT JUVENILE OFFENDERS: THE MASSACHUSETTS EXPERIENCE

DR. CHARLES F. WELLFORD: As your program indicates, our next speaker is Dr. Lloyd Ohlin, Taroff-Glueck Professor of Criminology at Harvard Law School. It is a very appropriate chair for Professor Ohlin to hold because, as you know, the Gluecks (Taroff was the maiden name of Eleanor Glueck) conducted a series of important research projects in the field of criminology dealing with a wide range of topics: prevention, adult criminal careers, delinquency, and so forth. Professor Ohlin's career has also spanned a range of important topics in our field, beginning with early work on the topics of prediction when he was in Illinois. The book he published with Richard Cloward in 1960, Delinquency and Opportunity, is known and loved by anyone who has been through a criminology class since 1960. In one poll, it was judged the most influential book since 1960 in our field, and it certainly has had a tremendous impact on government policy, research, and theory development.

Beginning in about 1972, Professor Ohlin, Alden Miller (who is now at the Institute of Criminal Justice and Criminology at Maryland), and Robert Coates (who is currently at the University of Chicago) began conducting a series of studies on the reforms being undertaken in the juvenile justice system in Massachusetts, reforms that were sometimes associated with the work of Jerome Miller. That research resulted in a number of publications analyzing the reforms and developing various strategies for evaluation and theories of juvenile justice and criminal justice reform. We asked Professor Ohlin to speak to us today about that experience, particularly as it relates to the problem of juvenile repeat offenders. The most recent work that he and Alden Miller have been doing has focused on the repeat offender, the violent offender. We are very pleased to have him with us today.

DR. LLOYD E. OHLIN: There is undoubtedly little need to point out to this audience that the juvenile system is under attack today from many quarters. It is important for us to examine some of the reasons for these criticisms in order that we may deal more effectively with them and think through for ourselves what policies ought to govern the juvenile system. Clearly, public concern and fear about crime applies not only to adult offenders but increasingly to juvenile offenders as well. In general, there is much more willingness today to resort to harsh and punitive penalties in response to the crime problem.

The research by Professor Marvin Wolfgang and others in recent years has concentrated our attention, as you witnessed this morning, on high-rate offenders. It suggests a strategy of selective incapacitation that may be difficult to achieve without unacceptable costs. To be successful, it requires the development of criteria for the early identification of those who are destined to become serious juvenile and adult offenders. The best indicators, as Professor Wolfgang has shown, are based on juvenile

record, age at first arrest, first commitment, and the extent of the record. Such indicators suggest the desirability of intervening more forcefully to prevent the escalation of juvenile offenses into adult criminal careers. This possibility reflects a growing concern that the juvenile court and correctional system may be too permissive. To understand the implications of this view, it is important to consider more carefully the charges advanced by critics of the juvenile justice system and the policy issues raised by them.

In the first place, the system is seen as too subjective and too individualized in its approach to decision making from the successive stages of arrest, charging, and sentencing, to placement and release. The demand is for predictable and objective standards. In the adult system, this has led, as you know, to the development of sentencing guidelines, sometimes imposed by legislatures, and in other states developed by the courts or parole boards.

A second major charge is that rehabilitation does not work. The late Professor Robert Martinson examined the results of many evaluation studies and concluded that these studies have rarely demonstrated any effective and successful programs to change offenders. My own feeling is that this position has now been overdrawn. There are, in fact, many helpful programs that do achieve a significant impact. The problem is that recidivism, the most common measure of outcome, may be caused by many other factors as well as the failure of rehabilitation programs to achieve a long-term impact. The Martinson challenge, however, has helped to get rid of a lot of hypocrisy about what works and how well.

A third criticism is that the system is much too lenient, especially with violent, serious offenders. Such critics maintain that only the fear of punishment provides effective control. They feel that repeat offenders have proved themselves unreachable by other means sufficient to meet the public need for protection. The basic idea is that repeat offenders have used up their chances and that therefore advocating harsh penalties is the only recourse left to us.

From the liberal side of the ideological spectrum comes the charge that very often less serious offenders are kept longer in the system than more serious offenders. This has been directed particularly to the situation of status offenders, who may prove troublesome in their resistance to authority and thus remain longer in the system, while more manipulative and dangerous offenders are permitted to leave.

One also encounters the criticism that the juvenile justice system lacks adequate due process safeguards to protect the rights of juveniles.

In sum, this adds up to five major themes that set the policy issues for this Conference. I noticed that the panels scheduled for discussion this afternoon deal more or less directly with these major policy issues. Let me enumerate what those issues appear to be.

The first is the issue of discretion. The policy question is whether

or not government authority is sufficiently circumscribed and accountable in the way it processes offenders. It suggests the need for some structural limitations on decision making, perhaps the development of guidelines to control discretion. We see more and more such proposals in the juvenile field, following analogies with developments in the adult system.

The second issue of concern is that of "just deserts." This raises the policy question as to whether there ought to be more uniformity in the sanctions that we apply to offenders, based on offense and offender characteristics. It requires that steps be taken to increase the uniformity and predictability of sanctions proportionate to the nature of the offense and juvenile record.

A third issue is that of safeguards: whether procedural protections are, in fact, provided. A fourth issue relates to the principle of "least restrictive alternative." The basic idea is that we should use the least restrictive alternative available when we apply sanctions that deny personal freedom. This implies the necessity to develop criteria that justify the failure to use the least restrictive alternative when this occurs.

The final three issues relate to the concepts of rehabilitation, deterrence, and incapacitation. On the rehabilitation side, the question remains: If offenders are to be incarcerated, are they not then entitled to some of the opportunities which rehabilitation measures sought to provide, to think through their problems, and to obtain assistance in developing alternative types of law-abiding careers? On the deterrence issue, the question is whether the system operates with enough speed and certainty so that punishment can, in fact, deter. And on the incapacitation issue, the policy question is whether we can, in fact, reduce the crime rate by sorting out those who will continue their crime careers, without incurring too high a risk of erroneous prediction.

Let us turn to where all this leaves us today. What are some of the major proposals for change that will affect how we classify, sentence, and treat repeat offenders? One major proposal relates to the choice of a determinate or indeterminate sentencing system. This, as you know, is a major issue in reforms now taking place in the adult criminal justice system. Mandatory sentences are being proposed for certain types of offenses. The concept of "presumptive sentencing" establishes a narrow range within which the courts can determine a specific length of stay in confinement. It may lead to guidelines for sentencing and release, and even to the elimination of parole boards. The contest here is among the legislature, the prosecutors, courts, and corrections as to who will control the length of stay in institutions and the type of sentence to be administered.

This trend is already appearing in the juvenile field. For example, in the state of Washington, they already have a system, set up by the legislature, which specifies five levels of sanctions to be administered by the court depending upon the offense and prior record. Four of these levels require some form of confinement; the fifth level is a community

or residential placement. These statutes also specify how long people should stay in confinement in accordance with a determinate sentencing model. There is, however, a loophole called the "manifest injustice" clause. This clause permits juvenile court judges, in many cases, to find a condition of injustice to the offender, or the public, as a way of avoiding the penalties prescribed by the legislature. Georgia also has such a system, I understand.

There is clearly increasing pressure throughout the country for the establishment of some type of determinate sentencing system for juveniles in place of the indeterminate system which has characterized the juvenile process ever since the establishment of the juvenile court. This turn to determinate sentencing, I think, is motivated by the desire to ensure lock-up and incapacitation of the more serious offenders, to reduce disparity in the sentences which are meted out, and to achieve more predictability and deterrence from the sentences which are administered. Whether these goals are actually achieved by this approach has not been demonstrated successfully and is still a cause of much debate.

In addition to the issue of determinate and indeterminate sentencing, there is also a debate about the use of waivers, whereby juveniles are tried as adults because of the seriousness of their offense or the extent of their delinquent record. Perhaps the best example is in the state of New York, where many younger offenders, based on age, prior record, and type of offense, are mandatorily waived to the adult court for processing. Also, a study recently conducted by the Ursa Institute in San Francisco on a national sample turned up a situation in Miami where some forty-four percent of the cases arraigned before the Miami juvenile court were, in fact, waived over to the adult court. Closer examination showed that these waivers were largely those sixteen years and older who, as a matter of policy, were normally turned over to the adult court.

But the idea of waiver to the adult court is one that is actively supported around the country and has been advocated here in Professor Wolfgang's closing remarks. We know in New York, however, that most of those sent to the Superior Court are returned to the Family Court and most of them, in fact, wind up in juvenile institutions. One of the ironies of a policy of waiver of juveniles to the adult court is the likelihood that they will be sentenced more leniently than by the juvenile court because their crimes appear less heinous than those of adults. Often the waiver is also used as a threat. In Massachusetts, for example, the juvenile court, particularly in the Boston area, frequently used the threat of waiver to induce the youth service agencies to provide placements more in keeping with the court expectation of what should be done with serious offenders.

A third type of development is the proposal to reduce the age of juvenile court jurisdiction, as a way to handle the serious or the repeat offender problem. The trend has been down, from age twenty-one or eighteen, to seventeen, sixteen, or even fifteen in some states. There is also a reduction in how long persons can be held in the juvenile justice system. In Massachusetts, this has declined from age twenty-one to eighteen. So here again, there is

pressure on the juvenile system to limit its jurisdiction by turning older offenders over to the adult system. The problem, of course, is what we expect the adult system to do with these offenders. Those familiar with adult prisons know that younger offenders are often exploited as homosexual targets. They become hardened to the various kinds of terror they are exposed to, seek protection from older cons, and learn more about crime. The net result of limiting juvenile jurisdiction in favor of adult processing may provide less public protection in the long run.

A more drastic trend is the recommendation for elimination of juvenile courts. I do not know of any state in which that has actually taken place, but there are some very persuasive advocates of such a measure. The argument, since the Gault decision in 1967, is that the due process revolution in the juvenile court makes it virtually indistinguishable from the criminal court. I think this is an undesirable step. We need to cultivate special concern and mobilization of resources for youth that the adult court is not capable of undertaking, especially for the repeat offenders who concern us here today.

Another proposal is to take control of placement and release away from the correctional authorities and place it in the court, so as to produce a court-controlled system from the standpoint of placement and length of stay. This is justified by the argument that the local court can better reflect community norms regarding the seriousness of juvenile crime. My own feeling, again, is that this would be an unwise measure, because it could lead to great disparity and unequal treatment, and because correctional authorities would in effect lose control of their budget. We have had a bill in the Massachusetts legislature, regularly introduced for about ten years, in which the aim has been to permit juvenile court judges to determine placement in the cases of very serious offenders and to determine length of stay. Though it has been routinely defeated by one or both branches of the legislature, it has led the correctional system to be more responsive to judges' concerns with regard to placement in secure care.

The final proposal I wish to mention urges the creation of a special court, a "youth court," to handle older, more serious types of offenders, so that in effect we wind up with a three-tier system. That is a course that may well provide an option in large cities but may be difficult to administer on a statewide basis.

Well, what then are the alternatives to these proposals? What can we do to respond to these proposals? What sort of a juvenile system should we be developing? My personal belief is that the juvenile justice system can reform itself to deal with these criticisms, and that the system can do it more successfully than can the proposals I have just mentioned. I think the serious juvenile offender should and can be dealt with in the juvenile justice system. We need to demonstrate this capacity for accountability to the critics of the system. I would like to note that Massachusetts has succeeded in holding off the pressures to reinstitute the training schools which were closed during the 1970s. These institutions now, for the most part, are operated by the adult correctional system which, of

course, is overcrowded, as are all adult correctional systems today. There appears no likelihood that the former training schools will again become available to the juvenile system. Instead, new ones would have to be built and funds are hard to come by for that purpose. The alternative has been to increase the number of small, secure facilities that are available to the Department of Youth Services and to purchase a rich variety of residential and non-residential services from the private sector. These purchased services now account for over sixty percent of the Department's budget.

I would like to share with you a few statistics to bring you up to date on where the Massachusetts system is at this point, since I have encountered many rumors and misconceptions in meeting with different groups around the country. In the first place, I should preface these remarks by noting that Massachusetts never did away completely with the secure care system. Even under the regime of Commissioner Jerome Miller as the institutions were being closed, there were still secure care facilities in the system. The closing of the training schools was so dramatic that attention was diverted from the small proportion of offenders, approximately ten percent, that requires secure care, preferably some sequential arrangement with community-based, residential and non-residential services.

First, the population of juveniles at risk of offending (juvenile jurisdiction extends to the seventeenth birthday) is going down in Massachusetts, as it is going down elsewhere in other states in the country. It was 13.4 percent of the total population in 1970; the projection is 8.2 percent in 1990.

Secondly, we also find from our statistical appraisal that the violent offenders in the seventeen to twenty year age group are responsible for two to three times as much of the violent crime as those under seventeen.

My third point is that the arraignments before the juvenile court in Massachusetts have decreased steadily over the past five or six years. In 1978, the arraignment rate in the juvenile court was forty per 1,000 youth in the general population, while in 1982, it was thirty-three per 1,000. So if one uses appearance before the court as a measure of how well the correctional system is doing, then one has to say it is doing its job in that respect. Also with regard to arrests, we found that in Boston, for example, the arrests of juvenile offenders had decreased thirty-six percent from 1975 to 1980, and that decrease continues.

But then we come to a rather curious finding. The rate of first-time commitments from the court to the Department of Youth Services increased from twenty-four to forty-two per 1,000 offenders from 1978 to 1982, a seventy-two percent increase. In other words, while arrest rates and appearances before the court were going down, first commitments increased by seventy-two percent. There have been various interpretations of this. One is that the judges are more responsive to community pressures. Another suggestion has been that the judges now have more confidence in the juvenile system and are sending more offenders there to be treated. A third explanation is that the welfare and mental health systems have neglected their responsibilities in these cases and therefore more first-time commitments

of "lighter" offenders, rather than "heavier" offenders, are being sent into the system. The proportion of those sentenced for violent offenses has not increased over this period.

Another interesting indicator of what is going on is the number of waivers to the adult court. This reached a peak in 1975; as many as 126 offenders were waived to the adult court in that year, a reflection again, I think, of the courts' concern about the closing of the training schools. That is now down to thirty-six in 1982 and that decline has been steady since 1975. This suggests increased confidence by judges that the correctional system can handle serious offender problems within its own system.

Then there is the matter of secure beds. A very valuable study was undertaken by a Secure Care Task Force headed by an Assistant Attorney General in the late 1970s. The Task Force sought to determine the number of secure beds that the system would require at any one time. It took a ten percent sample of all those in the system of juvenile corrections on a given day, and tried to determine how many of those at that point required some measure of secure care. It found that about 11.3 percent needed such care. Thus, to handle the secure care problem, the system needed about 153 beds, with sixty-two in a locked, secure facility; thirty-eight in a mental health facility; and fifty-three in some lighter type of secure system. Currently, the Department of Youth Services has 109 secure beds and they project that by the fall of 1984 they will have 164. All of these will be in small facilities housing from twelve to thirty offenders. The large juvenile training school has been eliminated in Massachusetts. The system is now largely a private purchase system with the state running some secure care facilities, a forestry camp, and some diagnostic-reception units, as well as the detention facilities which they are mandated by law to provide for the juvenile courts.

One final development in Massachusetts has been the creation of a classification system for secure treatment. All those considered for secure care are recommended to a secure treatment panel, which classifies the offenders in terms of a grid scheme. It has three categories: a mandatory referral, category A, for those committing murder in the first or second degree, attempted murder, and voluntary manslaughter. A second category for mandatory referral, B, includes offenses of involuntary manslaughter, armed robbery, assault and battery (armed and causing serious bodily injury), forcible rape, arson of a dwelling house, kidnapping, and homicide by a motor vehicle. They also have age limits. The first category, A, includes the thirteen to sixteen year old offenders, and the mandatory referral to category B covers ages fourteen to sixteen. The final option is referral of any juvenile whose offense behavior presents a risk of danger to the community or who exhibits a persistent and escalating pattern of delinquency. The commitments to secure care are about evenly divided between those three categories, although of course there are fewer in the first category, category A. But if we lump the mandatory referrals together and consider mandatory referrals, optional referrals, and revocation procedures within the system, those categories are evenly distributed in secure care.

Let me return now to the question of what alternatives we have for making the juvenile justice system more accountable. One thing we can do is to create broad guidelines but not the mandatory, narrow ones sought by many of the systems today that are interested in creating a determinate instead of an indeterminate system for juveniles. We might, I think, follow the example of the American Law Institute Model Penal Code which was created for adults. The basic idea is to create three or four categories of seriousness which would provide all the discrimination we would need to deal with younger offenders. The maximum sentences might be specified, and perhaps even provide for extended maximums under certain kinds of conditions and unusual cases.

This approach would let the juvenile court judge retain the discretion to set minimum terms of commitment or probation within these legislated categories. When judges turn jurisdiction over to the correctional authority, the minimum and maximum would represent the limits of control, whether in secure care or in some other placement. I believe, however, that judges should not be in a position to designate placement because of the problems of disparity, overload on certain services, and uncontrollable costs that would introduce in the system. I think those decisions should be left to the youth correctional agency following diagnosis, and that the judges should create their own guidelines for reducing disparities in sentencing.

A second measure might be to greatly increase probation resources over those now available. I still think that probation is the best agency for handling prevention and initial treatment efforts in communities. By and large, probation lacks funds and adequate treatment or referral options. These should be provided. Probation officers should act more as case managers rather than as case workers in our juvenile system. They should be there to advocate, to place referrals, to mobilize services; in short, to strengthen the positive as opposed to the negative features of the social networks in which these youths are engaged and which lead to their delinquent behavior in the first place. In most states in the country, probation officers are overburdened with large case loads and pre-sentence investigations, which I think prevents them from playing a successful role as case managers. They should be freed, however, to arrange institutional agreements, community service placements, and follow-up referrals to private purchase services, so that they can, in fact, function effectively as case managers of those placed on probation.

A third step might be to create better reception and diagnostic centers for those committed to the youth correctional system. We do have to assess the needs of offenders coming into the system and devise realistic plans to meet those needs. The diagnoses also must be relevant to the services actually available.

The next step, and perhaps the most important, is to create a much richer, more diversified set of correctional options, to replace over-reliance on the large training schools which, I believe, have outlived their usefulness. The economies of scale that correctional officials are

so concerned about achieving with large institutions may not be worth it when one considers the social costs of the regimented processing which inevitably takes place in large institutions. The number of relationships to be controlled is much more difficult in a large facility and permits the development of oppositional inmate subcultures which defy various official efforts at treatment. So even though corrections gets more repeat offenders for longer terms, we still have to ask: What is to be done with them? To deal with this best, we need small, secure units with intensive individual counselling, group guidance programs, individual remedial work using volunteer programs, learning machines, and other aids more available today than in the past.

We also need a graded system of security. The notion that one secure facility can serve all secure care needs seems wrong. We should create different levels of security provided in different kinds of ways, sometimes through more intensive programming in more open facilities and sometimes through more intensive supervision in the community. One of the most successful programs developed in Massachusetts was the KEY program, which involved the tracking of offenders. Workers were assigned to work intensively for six months with one to four or five offenders. They contacted them daily while working as advocates in community placements, foster homes, schools, and other problematic situations. They provided an essential resource in the community for youth on release from residential placement. One form that took with the most serious repeat offenders was to use a combination of residential facility on the one hand and intensive community supervision with various contract agreements with the offenders on the other. Offenders were frequently moved back and forth. If trouble developed out in the community, the offender went back to the residential facility for a time while new arrangements were worked out.

It seems we need more of that kind of flexibility in programming to deal with the more volatile types of youth. This means, of course, having access to a variety of small, residential group homes which are community-based; it means creating much more frequent contact with support networks of parents, relatives, friends, and sponsors in the community through visits and furloughs while the offenders are still in residential care, and also more use in parole of foster care and other types of sponsorship arrangements.

We also need more case managers in the community than we have now. One of the major findings of our studies in Massachusetts was that constructive changes did occur in the residential programs, but on release to the community, these changes were wiped out so that they had virtually no effect on recidivism rates. Treatment resources were concentrated in the facilities and then youth were released to confront the same old problems they had before in the neighborhood, family, school, and peer groups. Without better follow-up after-care in the community, very little can be accomplished in the long run. Our conclusion, in fact, was that the system had not gone far enough toward organizing better control in the community. I know that is not an easy problem, because other studies we have done show that communities create different opportunity

tracks for youth in school as compared to corrections. This tracking effect constitutes an opportunity barrier that has to be rectified.

One final comment, since my time has run out, is to call your attention to the Violent Offender Program, which has been developed around the country with support from the Office of Juvenile Justice and Delinquency Prevention. Though the final results are not yet in, I think it offers one of the best models currently available, since it is trying to draw on experience from around the country on what works and what produces the best hope for change. It pursues a community integration model, involving considerable agency autonomy and experimentation. It stresses youth opportunities and social learning, and retains case management as a key concept.

In closing, let me insist again that simply incapacitating offenders is not enough. We need to concentrate more resources on serious, violent offenders who appear the most dangerous. We need to avoid "warehousing" types of institutions as a solution. Most youth come out worse than they went in. We need instead different graded levels of security. Above all, we need to develop better programs of control and treatment in the community, because that is where the problem of crime arises and, I think, ultimately, that is where it must be solved.

JUVENILE REPEAT OFFENDERS AND THE "SYSTEM"

DR. CHARLES F. WELLFORD: Professor Ohlin has identified the general issues and avenues that states and jurisdictions are taking, and Allen Breed will now tell us what the solution to all these issues should be. Allen asked me earlier: "What do you really want out of my talk?" And I said: "I want you to tell us about the future." That, of course, sets an almost impossible task, but not one we will be able to judge the speaker on for some time to come.

We could not have gotten a much better person to do this. As you know, for many years Allen Breed directed the Youth Authority in California, and when we talked about a model of a juvenile services system, we would turn to California and Allen for direction. The direction he provided has certainly moved the entire field of juvenile justice along. Since leaving California, he has been the Director of the National Institute of Corrections, a position he just recently left. In that position, he moved a new and fledgling federal agency along to where I think we would all acknowledge it as being one of the most respected federal agencies dealing with crime and criminal justice, an agency respected not only for its work but for the integrity of the agency and the way in which it responds to the needs of the field. It is for that reason that we have asked Allen Breed to speak to us about the juvenile justice system and its response to repeat offenders.

MR. ALLEN F. BREED: Thank you very much. I guess in some ways I am the balance between theory, research, and the practical reality. I feel very uncomfortable in this role this morning, because I have been away from the juvenile field for over six years. Also, my perspective in recent years has been at the national level as against those of you who are certainly experts and specialists on Maryland. I have always had a strong objection to outsiders, alleged experts, coming in and telling state and local people how they should be operating their programs. So, as a form of compensation for all these concerns, I did very carefully review the literature to see if I could catch up on what was happening in the field. Fortunately for my own orientation, I found there had been really little progress in the past six years towards any greater knowledge base. I really do not even have any sense of having been away.

There is limited research going on; we continue to seem to be acting on emotion rather than fact. I really do have to commend the Office of Juvenile Justice and Delinquency Prevention as being the only game in town, and one which has continued to invest sizeable amounts of money into program development, research, and evaluation. We will all have a chance to hear its new administrator, Al Regnery, and I would have to commend him for asking hard questions, often questions that we do not like to hear asked, but which I think are crucially important to ask.

Most importantly, as I looked at the literature, however, and particularly reviewed some of the reliable news journals, such as Time magazine,

Newsweek, the New York Times, and certainly some of the reports coming out of the major networks of TV, I could not help but be impressed with the fact that the news media inform us that there is a crime wave of terrible proportions in the juvenile justice area. One cannot help but be concerned because of this negative attention. Perhaps this is not a particularly good time for jurisdictions to be reviewing what they are doing. Unfortunately, we are reviewing at a time when there is undue attention, concern, perhaps hysteria regarding crime across the nation. One should also be concerned that this review is taking place during a time of current conservative trends in politics, dramatically reduced resources at the state and local levels, frightened public mood, and dramatic media attention.

So my contribution today will be that there are certain basic principles that have to be addressed, as we look to the future of juvenile justice and particularly the violent juvenile offender, if we are going to have any real impact. First, public policy just must be determined at the state and local levels, not at the federal government level. Second, one cannot develop sound public policy in a climate of hysteria. Third, and perhaps most importantly, one cannot responsibly develop public policy without the necessary data to make decisions. Now, it is the last principle that I am the most concerned about. Even though our other speakers have addressed some of these areas, I think it needs further emphasis.

Let us take a look, very quickly, at the data we have from a national perspective, and summarize as follows: What is the extent of violent juvenile crime? Is there reason for the hysteria that the media have implanted on us? First, juvenile arrests have been dropping for over five years. Second, only four to five percent of juvenile arrests are for any form of violent crime. Third, only twenty percent of the nation's arrests for violent crimes were committed by people under the age of eighteen. Fourth, adult arrests for serious crimes have increased far more than for juveniles over the past ten years. I am not in any way attempting to depreciate the problem, particularly of violent juvenile crime, but to summarize, the facts are that juveniles are responsible for only a small percentage of all the violent crime committed in this country, and this number has been decreasing since 1980. That speaks to the number that we deal with, and helps us in terms of projecting ahead to what we should be doing.

Next, the characteristics of violent juvenile offenders: Who are they? After reviewing the data, I think it can best be summarized that most violent juveniles are males between the ages of fifteen and eighteen, they are disproportionately black and Hispanic, and they live in low-income areas of America's largest cities. Most of them are youth who will commit their crimes with a group, and the most important influence on their criminal behavior is the delinquent gang or the peer group they associate with. What does that mean in terms of the kinds of programs that we have developed for the violent juvenile offender?

How have the courts reacted to violent juvenile offenders? There is concern about leniency in the juvenile court, particularly. We hear about the great amount of variation in sanctions among the states and within any given state. Generally speaking, the facts are there is little evidence that violent juvenile offenders are treated more leniently than violent adult

offenders. Second, juvenile courts are more likely to convict serious offenders than criminal courts. Third, only a small percentage of juveniles arrested for crimes subject to prosecution in the adult court actually receive adult sentences. In other words, even though the waiver to criminal courts is available, it is seldom used. Fourth, youths waived to the adult courts were found to receive shorter sentences than their counterparts in the juvenile courts. In summary, indeed, the juvenile court has not been lenient and the efficiency of the criminal court is not something to emulate.

And what about the alternative programs to incarcerating juvenile offenders? We in the field over the past three decades have done very little in the way of any program development or research, particularly as far as it affects the violent offender. But I reviewed carefully once again the Massachusetts program, the California special treatment program, the Silverlake experiment, the Provo experiment, the United Delinquency Intervention Services, and, more recently, New Pride. I find from that review, first, that research consistently shows that youth placed in the community succeed at the same rate as those committed to institutions. Second, there has been no evidence that community programs are cheaper (if adequate resources are provided) than institutional programs, except when new construction is required.

In summary, then, I would say the literature tells us that we know little more today than we did six years ago. There have been few innovative, creative programs for the violent offender, and research, generally speaking, has been shallow and poorly funded. Our decisionmaking processes continue to be emotional rather than involving careful analysis based on pertinent data. I would suggest that to make responsible public policy about violent juvenile offenders in Maryland, where most of you come from, you should very carefully examine your data and ask yourselves some very hard questions.

The facts are, juvenile crime and juvenile violent crime are steadily going down. In Maryland, from 1974 to 1980, there was an eleven percent decrease in total juvenile arrests, a sixteen percent decrease in status offense arrests, and, most importantly, a seventeen percent decrease in violent crimes. With that kind of factual data on arrests, coupled with the fact that there are four percent fewer children in Maryland in the crime-prone age group, I suggest you ask yourselves these questions: Why are your admission rates for detention so high? Why, over a period when crime was going down, did you have a 179 percent increase in the last five years in admissions to detention? Why should the length of stay in detention be the fourth highest in the United States? Why is your ratio of admissions to state juvenile institutions the fourth highest in this country? And with such extensive use of juvenile institutions, why are the costs for care in your institutions one of the lowest in the nation? Why is the rate of incarceration of juveniles in state prisons the eighth highest in the United States?

Now, I am not necessarily criticizing your current public policy, or saying that it is wrong. I just wonder whether you are aware of it. There is also a serious overcrowding problem in your institutions. It appears to me that you have to make some public policy decisions, set some standards: Do

you divert more, shorten length of stay, build more beds? If you build more beds, how much security investment should you give them?

Given all this, I would like to do some forecasting, very, very quickly, about the future. These forecasts are not necessarily approaches that I advocate but rather some directions, from a national perspective, in which the field is moving. The field will move in those directions unless you take a different stand in terms of your own public policy.

In our country, and the literature will support this, experts are still estimating that about fifty percent of those juveniles who are found in our institutions could be safely worked with in a community setting. Even with that knowledge, we continue to build more beds, even when the costs of construction have become astronomically high. But the costs that are shared with the public never figure in the loan reduction costs or add in the operating costs over a period of years. The economists now tell us that to build a new, high-level security juvenile institution would cost the taxpayers $30,000 per year for every child placed therein for the next thirty years. That is three times as much as we are currently spending to keep a child in a juvenile institution.

My forecast, then, would look like this. There is a clear emphasis in the future on community alternatives, not for philosophical reasons, unfortunately, but for sheer cost reasons. Second, the move towards community corrections is going to see a renaissance of some form of subsidies from state to local government. I recall a number of years ago it was called "probation subsidy." Whether that word comes back or not, there will be huge amounts of money being subvented from state to local levels, but with a performance factor to ensure that the net will not be wider with more young people brought into the system.

Third, some construction is bound to be necessary. Such construction will be designed with what is known as a "hard perimeter" and a barrier-free interior. Such construction designs cost far less than the traditional high security institution for children.

My fourth prediction of the direction that we are going in was mentioned by Lloyd Ohlin on several occasions. The juvenile court codes are currently being rewritten all over this country. There is no question that the juvenile court itself will be preserved, but the age of jurisdiction will be tightened, punishment will be added as a rationale and reason for its existence along with the traditional rehabilitation, and waiver will be increased and encouraged as a way of diverting more young violent offenders into the adult system.

Yet, there would be far greater need to move into something that has been described here already this morning as a "three-tier system." As juvenile court ages compress, and as there is more and more concern on the part of decision makers regarding conditions in prisons today, there falls in the middle a group that we have historically called the youthful offender, sixteen to eighteen, or twenty-one, or twenty-three. I would suggest in more and more states, and possibly in Maryland, we may be moving to a three-tier system.

Steps also will be taken that require a far greater use of the private sector; its involvement would go beyond just contracting for services as we have historically done, but also to the purchase-of-service concept. We will see the private sector moving in as they already have in Florida with the total operation of a juvenile institution. The money is available not only to operate but to build residential programs as well.

I also predict there will be a far greater use of an empirically-based classification system that will begin in a far more scientific way to speak to the degree of security and custody as well as programming that a given juvenile requires.

And last, I would hope, and predict, that there will be a greater infusion of federal funds into the state and local systems. There will be money for some progressive programs that will be thoroughly evaluated and additional funds for such specific efforts as education and training.

Well, that is a quick look at the future on the basis of what one can see in reviewing the literature and having the opportunity to visit around the country. I would hope, however, that today and in the months ahead, each of you will recognize that the direction Maryland is going to go in will be shaped by the pressures that come from the media, the decision makers, and people with vested interests. It is crucially important that, as you deal particularly with the violent juvenile offender, you take the action necessary to shape that public policy. In determining what you ought to do, the basis for making decisions should be on an effective, cost-benefit analysis. Second, make sure that you do not let the media force you to make emotional decisions around the concern of the moment. Last, and most importantly, decide what you want on the basis of what you actually need.

LUNCHEON ADDRESS

DR. CLEMENTINE L. KAUFMAN: It is my distinct and very "privileged" privilege to introduce our luncheon speaker, Mr. Al Regnery. He was born in Chicago, went to the University of Wisconsin Law School, and is a member of the State Bar of Wisconsin and the American Bar Association. Formerly, he was Chief Minority Counsel for the Senate Judiciary Committee's Administrative Practices and Procedures Subcommittee, and was Deputy Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice before becoming the Director of the Office of Juvenile Justice and Delinquency Prevention. Mr. Regnery is married and has four children.

Mr. Regnery has done an extraordinary job as head of the Office of Juvenile Justice and Delinquency Prevention. He just told me he has been in that office for one year and two weeks. He has certainly had an impact on the office, and those of us who work in the field are aware of the new directions he has taken us in. There are other directions he will lead us towards, I am sure, and you will hear about some of those today. It is a real privilege to have you here today. Welcome to Maryland.

MR. ALFRED S. REGNERY: Thanks very much for the kind introduction. It is a great pleasure for me to be here today and to participate, if only briefly, in this Conference on juvenile offenders. I came in this morning about fifteen minutes before the end of the last session and what I heard was something very interesting. I wish I could have been here for more of it but, unfortunately, I had to go to another one of these things this morning at nine o'clock and I have to catch an airplane shortly to go to New Orleans, so I will not be able to stay with you for very long. But I gather from what I have heard that some of the things you were talking about were certainly topical, judging from some of the questions I heard you ask. My office is placing considerable resources and emphasis on the subject, both on research projects where we hope to learn more about these offenders, and on demonstration projects to try to find better ways to deal with them.

Although we know a great deal more about young, chronic offenders and their motivations than we did even ten years ago, our knowledge is still, at best, a glimmer in a dark world. So I welcome your examination of the subject, and urge you to let us know of your conclusions.

There is a great story about Oliver Wendell Holmes that I would like to tell, that I think merits retelling at this point, and which may have a certain relevance today. When he was in his eighties, nearing the end of his distinguished career on the Supreme Court, Holmes found himself on a train. Confronted by the conductor, he fumbled around for his ticket, but without success. Recognizing the old jurist, the conductor told him not to worry, that he could just send the ticket in when he found it. (That was, of course, before Amtrak took over the passenger business.) Holmes

looked at the conductor with some irritation and replied: "The problem is not where my ticket is. The problem is, where am I going?"

A good many juvenile judges and others in the juvenile justice system are beginning to ask the same question. As a result of the efforts of my office over the last ten years, jurisdiction over status offenders has been largely removed from the juvenile courts. And as legislators in the states try to respond to the cries of their constituents to "do something" about juvenile crime, they respond by removing serious offenders from the jurisdiction of the juvenile courts and placing them instead in the criminal justice system. The result? Increasingly, there is the prospect that the juvenile courts will eventually be out of the criminal justice business altogether.

We now know that most serious juvenile crime is committed by a small band of juvenile offenders--offenders who go on to become the career criminals of tomorrow. Being the subject matter of this meeting, it probably is not necessary to reiterate the statistics. But it is necessary, I think, to reiterate the fact that this small group of offenders has proven to be an excessively difficult group of people to deal with, and may prove to be the very undoing of the juvenile system. And that may be because the juvenile court system has not been willing, or perhaps because the juvenile court system, because of its very structure, has not been <u>able</u>, to deal with these offenders in a manner satisfactory to the public.

In a recent paper delivered to the National Council of Juvenile and Family Court Judges, Charles Springer, a member of the Supreme Court of Nevada, and a former juvenile court judge himself, said the following:

> "On paper and in doctrine, the juvenile court system is clearly based on the positivistic-deterministic principle of criminal justice. Whereas the adult system still preserves the essence of justice, the juvenile system is, theoretically at least, bound completely to a social defense system that denies personal, moral responsibility as non-existent and absurd. Personal guilt, individual accountability, and punishment <u>for</u> wrong conduct is rejected by the language and philosophy of the juvenile justice system."

As Justice Springer states, punishment has not been one of the strong suits of the juvenile justice system. A good many of the spokesmen for that system, of course, concur that it should not be. But we do have a different set of problems today than we had when the juvenile justice system was established eighty-five years ago, and a different set of problems than we did even in the 1950s. And that set of problems is, primarily, the chronic offenders you are here to discuss today.

One of the reasons why the juvenile courts are, little by little, having their jurisdiction whittled away by the legislatures is because they <u>do not</u>--or <u>cannot</u>--punish the chronic offender. So, very simply, statutes are changed to place these offenders in a system--the criminal justice system--that <u>does</u> provide punishment. A long parade of states have

changed their codes to permit such waiver and transfer. The parade, I am convinced, has yet to pass us by. And however long the route of march, the professionals in the system have already become more than passive spectators.

At the end of 1982, adult prisons in this country housed over 6,000 inmates eighteen or younger. The figure will be considerably higher at the end of this year, perhaps as many as 9,000. Many go there because there is insufficient space in existing juvenile institutions, and they were waived into the adult system to satisfy a prosecutor's insistence that they be incarcerated. You, of all people, do not have to be told of the pressures placed on the system by such departures from statutory norm. They are not likely to vanish soon.

Waiver and transfer to adult court is also used because juvenile records are often unavailable to the criminal justice system. It may be that the theory of confidentiality is, in the case of the chronic offender, the juvenile court's own worst enemy. Suppose, for example, that a juvenile has passed through the court system several times, but the prosecutor realizes that his records may be sealed when he turns eighteen. What does he do? He has the juvenile waived into the adult system--but not because he feels he may be more easy to convict, or because he may be incarcerated for a longer period of time. He is waived in order to get his records into the adult court system, once and for all, where they will always be available.

Just earlier this week, the Bureau of Justice Statistics, in its comprehensive portrait of crime and criminal justice in the United States, reported that although the bulk of serious crime is committed by men under twenty, the most prison-prone age is between twenty and twenty-nine. The lag, according to BJS, reflects the time it takes to develop a record that warrants prison. More seriously, research has found that the average age at which those we now call career criminals are finally incarcerated by career criminal programs is twenty-nine. That is long after the age at which they are the most crime-prone. In fact, the age at which people, statistically, commit the most crime is between sixteen and twenty-three. So we get them after most of their crime has been committed.

Why the lag? Certainly one of the reasons is because high-rate chronic offenders who started as juveniles, as most of them do, get a fresh start when they are eighteen as they enter the criminal justice system, and it takes until twenty-nine for them to accumulate a sufficient official record, without juvenile records, to be finally incarcerated as career criminals. The result is clearly an injustice to society and that offender's victims, as well as, in many cases, an injustice to the offender himself.

In essence, the juvenile justice system needs to abandon much of its protective philosophy, at least as it concerns chronic juvenile offenders, and needs to start providing justice to society as well as to the offenders. Justinian defined justice as "perpetual disposition to render every man his due." In other words, he believed justice is what is due to society by its members, as well as what is due or deserved by one who violates the rules of society. Criminal justice, as well as juvenile justice, can be nothing

less and nothing more.

If justice is going to provide its due, law violators, whether they be young or old, should be punished for their misdeeds. Juvenile offenders, particularly the hardened, chronic offenders so well described by Professor Wolfgang and others, are not the guileless, plastic and pliable people they are portrayed to be by those who would free them from moral and legal responsibility. As do most people, young offenders understand punishment, and they understand fairness. And that is true whether they be called children by the legal system, or adults. An honest return to including punishment as one of the natural and just consequences of criminal behavior--holding criminally active young people responsible, in other words, and accountable for their crimes--is the only way the juvenile justice system can become a system of justice. To do less will, I believe, subject the juvenile justice system to further erosion by the state legislatures and to its ultimate demise.

It is not only those of us who are political appointees in the conservative Reagan administration who are calling for such reforms in the juvenile justice system. Indeed, pleas to do so come from all sides of the political and ideological spectrum. Consider, for example, the following recommendation:

> "The length of time that a young criminal is confined ought to be determined primarily by the nature of the offense he has committed, with due consideration for the reduced capacity of children to formulate criminal intent, past records, and the fact that mere passage of time is more likely to alter the behavior of a fifteen year old than a thirty year old. A sentencing system for child criminals which primarily reflects the seriousness of the crimes is a reform that is long, long overdue. It is vociferously resisted, however, by those misguided humanitarians who insist that the coercive power of a court should be a conduit for social services and that treatment is holy."

That is from the director of the juvenile rights project of the American Civil Liberties Union of New York City.

The foundation of the juvenile justice system is built on what some thought was a bedrock of rehabilitation. But we now know that what we once thought was bedrock may be nothing more than shifting sands, and that the foundation is washing away with the rest. You are all familiar, I am sure, with the late Robert Martinson's review of some 200 efforts to evaluate the impact of rehabilitation programs. In that review, he concluded that with a few and isolated exceptions, the rehabilitative efforts that had, until then, been reported had no appreciable effect on recidivism. After a careful review of Martinson's work, the National Academy of Sciences, in 1979 and again in 1981, came to the clear and concise conclusion that Martinson was right. Rehabilitation, no matter how it had been tried, simply did not rehabilitate. Martinson, of course, proved nothing new about rehabilitation except that if there were a formula that did work, nobody had yet discovered it.

Might that formula still be waiting in the wings? I am enough of an optimist to think it may be. And if nothing else, I believe we need to do a careful test of programs, including those that do punish offenders, to see if, in fact, we can find that formula.

I believe that making punishment part of the core of the juvenile justice system might just expand, rather than diminish, the traditional, individual rehabilitation orientation so prevalant now. Corrections, after all, is a form of moral education. What constitutes moral education? At least in part, moral education is blame for one's deeds, and the expression of discomfort, rather than pleasure, as a result. Rehabilitative efforts that we now attempt--counselling, rap sessions, psychotherapy, wilderness training, vocational training, academic education, or whatever else--have as their principal objective the socialization of the offender and, ultimately, the elimination of future criminal behavior. But as Mr. Martinson and others have pointed out, and as virtually all studies of the chronic juvenile offender indicate, those projects have not worked very well. By making the young offender aware that when the law is violated, he, like every other law violator, must pay for it, that he must receive punishment provided by law, and that he will be held accountable for his misdeeds, rehabilitation may, in fact, be the end result. The secondary benefit will be, of course, to provide justice to society as a whole, as opposed to the individual offender.

In fact, what I am suggesting is probably just what is actually happening within the criminal justice system as well as, to an extent, within the juvenile justice system. The problem is, we simply fail to recognize what is going on. Although we can call what we are doing "rehabilitation," we are surprised that what we are doing does not work, but go right along doing the same things anyway.

Should we be surprised that we have failed? James Q. Wilson, among others, of Harvard does not think so. He says: "It requires not only optimistic but heroic assumptions about the nature of man to lead one to suppose that a person, finally sentenced after many brushes with the law, and having devoted a good part of his youth and young adulthood to misbehavior of every sort, should, by either the solemnity of prison or the skillfulness of a counselor, come to see the error of his ways and to experience a transformation of his character."

Let me now take a few minutes to explain some of the programs that we at the Office of Juvenile Justice and Delinquency Prevention are undertaking to deal with the chronic offender. As I mentioned at the outset, we think the subject matter is important and are devoting substantial resources to it with the hope that we may be able to demonstrate some measures of success. A description of some of our new projects may shed a little more light on what we are trying to do.

First, we are providing more than $5 million to district attorneys' offices in major cities to set up vertical teams to prosecute chronic juvenile offenders. Based to a large extent on the many successful career criminal programs now operating around the country, we believe that this

new approach will have significant impact on the jurisdictions where it will function, and that the evaluation will show that it is the sort of approach which should be replicated. Juveniles generally get short shrift in prosecutors' offices and, more often than not, the most junior assistants are assigned to juvenile work. This new program will elevate juvenile prosecution, at least of the chronic offender, to a more prominent place in the prosecutors' offices.

The project is also based on the fact that a small group of juveniles commit a horrendous number of crimes, and that prosecuting that small number may be the most successful way of dealing with juvenile crime generally. In our Violent Offender Project, an experimental, community-based corrections project dealing strictly with violent juvenile offenders, self-report surveys indicate that the offenders in the program have each committed an average of 160 serious crimes. Marvin Wolfgang, in his 1945 Philadelphia cohort, estimates that his 627 "chronic offenders," arrested more than five times each, actually committed somewhere between eight and eleven serious offenses for each arrest. That select group of 627, in other words, may have actually committed some 50,000 offenses. It does not take much of a mathematician to conclude that it is precisely this group on whom prosecutors should focus.

But prosecution, by itself, is not enough, of course. Recognizing that those convicted--or adjudicated--young people will return to their communities someday, and recognizing the failures and astronomical cost of the juvenile correctional system, we are funding the expansion of privately-run, alternative correctional facilities for serious youthful offenders. I do not need to go into the problems that surround institutional programs now in existence. Such problems are legion. We have found, however, that there is a growing movement to develop what some believe to be more constructive alternatives, alternatives which eliminate or reduce what are seen to be as some of the most negative consequences of traditional institutional programming. Such programs are generally run by the private sector, and provide alternative correctional facilities for serious juvenile offenders. However, since nobody has been able to show whether or not these private programs are more effective than the institutional programs they displace, and whether they have any more impact on recidivism, we believe it is our responsibility to try to provide such information to the public. Accordingly, we are planning to select several private contractors to whom we will provide a partial reimbursement for the treatment of serious delinquents, to provide a variety of treatment approaches on the basis of their prior experience and staff qualifications. We will provide a thorough evaluation of the programs in a scientifically sophisticated manner, in order to show that such programs either are, or are not, successful. Program models will be based on the most innovative programs we can find and those which seem to show the most promise and which are the most cost-effective and will include a transitional phase back to the community. It is our preliminary belief that private correctional programs can be operated on a sound business basis and that they can provide better treatment at a more reasonable cost than can the public sector. Let me add, incidentally, for Mr. Breed's benefit, that we will not permit any "skimming" in the evaluation of these programs.

Third, we have funded a project known as the Serious Habitual Offender/ Drug-Involved Program within five police departments across the country. It will help police departments to identify and deal with habitual juvenile offenders, particularly those who have had serious drug involvement. The program is based on a management concept, and includes training and technical assistance to police officers to help them deal with this group, and will also provide a thoroughgoing evaluation to test its effectiveness.

Fourth, we have recently given a grant to the Rand Corporation for a project to pull together the various bits and pieces of research that have already been completed regarding serious, chronic offenders, in order to assimilate that research and to advise the juvenile justice community what the research, in total, shows and what else needs to be done.

Fifth, recognizing the fact that many of today's chronic offenders may be yesterday's abused children, we are funding research to be done at the University of Pennsylvania on the relationship between child abuse and delinquency, to help us find ways to assist the victims of the abuse. We are also working closely with the National Council of Juvenile and Family Court Judges to assist them in permanency planning for abused, neglected, and dependent children. Both of these projects will help alleviate some of this terribly difficult problem.

Many other ideas are percolating, all generated by the same flame of citizen concern and professional reassessment. For my own part, I have sought to redefine our primary mission at the Office of Juvenile Justice and Delinquency Prevention, to escape the old, confining notion that offenders are victims who must find their protection and their voice in my office. Instead, I suggest that we should look for ways to assist state and local governments as they combat juvenile crime--not with heated rhetoric or inflated promises, but with the cool precision of professional expertise, and the open-minded inquiry of specialists unwedded to yesterday's conventions.

Finally, in concert with the overall policies pursued by this Administration, I place considerable emphasis on the rights of the victim. In recent years, we have seen real progress in cracking open the criminal justice system, and admitting the crime victim to the process. Now we must broaden this concern to include the juvenile justice system itself. Forty percent of all crime victims must rely on that system for justice. It falls on us to assure that the victims, as well as the offenders, will find the justice which they seek.

So too, we must raise the standards of justice for everyone. Chronic offenders can no longer take shelter behind sentimentality or be released, only to resume their undeclared war against a civilized society. People have complained about youthful criminals for thousands of years. But together, I am convinced we can do more than complain. We can reform a system to produce justice as well as order. Experience says it will not be easy. And reality says we have no choice.

PANEL A
DEFINING AND IDENTIFYING THE JUVENILE REPEAT OFFENDER

DR. CHARLES F. WELLFORD: In assisting Anne Arundel County to develop its repeat offender program, it became quite clear that there were a variety of definitions and ways of identifying repeat offenders being used by jurisdictions in Maryland and across the country. This panel brings together people who are developing and using different approaches to defining and identifying juvenile repeat offenders to discuss what some of the issues and problems are. This discussion is intended to help us gain better insight into how we might improve our conceptualization and identification of juvenile repeat offenders. The order of presentation by the panelists will be, Dr. Wolfgang Pindur, Rex Smith, and finally, Judge Moore.

The first presentation concerns the National Juvenile Serious Habitual Offender/Drug Involved Program, which Dr. Pindur directs. Dr. Pindur is also serving as Professor of Urban Studies at Old Dominion University.

DR. WOLFGANG PINDUR: I have decided to call this presentation, prepared by my assistant, Donna Wells, and me, "The Injustice in Juvenile Justice."* It arises out of a concern I have about the juvenile justice system. I would like to address that concern and make sure I address the issues that are the subject of this workshop as well. I would like to discuss with you also the program for which I am the National Field Manager, which is called the SHO/DI Program, the Serious Habitual Offender/Drug Involved Program, which focuses on juvenile serious habitual offenders. I think that, rather than read the paper, I would like to make some comments based on the paper; I think there will be time later to ask any questions you might think are appropriate. You can find this issue discussed in more detail in an article Ms. Wells and I have prepared for publication in the June, 1984 issue of the Journal of Police Science and Administration.

I am going to begin with a couple of comments on the juvenile justice system. These are nothing new. Basically, the juvenile justice system has a benevolent attitude towards juvenile crime. What this kind of attitude has led to is that we have sometimes managed to destroy neighborhoods and communities; sometimes we have also not shown adequate concern for the victims. The research I have seen on the juvenile justice system and my observations from the communities I am working with show one thing unanimously: the juvenile justice system, for some reason, is not working very well. There seems to be little disagreement about that. Where the disagreement starts is, how do you make it work better? During lunch today, you heard one approach; I am sure many of you have other approaches to making the system work better. I am not even convinced, for example, that the juvenile justice system or any part of it does a very good job dealing even with the status offender.

I think what we have, in terms of this Conference specifically, is a conflict between the reality of the juvenile repeat offender (and I will define what I mean by that shortly) and the philosophy of the juvenile justice system.

*See Appendix I.

Part of this conflict comes about through the question: Is rehabilitation working? Again, I think at least reality—and that is what I want to talk to--shows that rehabilitation, at least for the juvenile repeat offender, is not working very well. One of our problems is that by the time we intervene with the juvenile repeat offender, it is usually too late. It is usually only when that person has become an adult that we try to figure out some appropriate sanctions. One of my other concerns with the juvenile justice system is that we like to pretend sometimes that the juvenile serious habitual offender does not exist. I think we like to pretend this because this juvenile is so very difficult to deal with. I think we really do not know very much about how best to deal with this particular juvenile.

I do most of my work with police departments. Police departments have become very cynical about dealing with juveniles. Police departments, in fact, almost want to ignore the juvenile problem. You can talk to police officers and ask: "Well, why are you doing this?" They will basically tell you that the kids are smart enough to know how to work the system and it really does not matter much what the police do. I think this cynicism has tremendous consequences for how we and our system try to deal with the juvenile habitual offender.

One of the other issues I want to address is the whole issue of treatment. Again, in looking at the various programs, in looking at juvenile repeat offenders, as well as looking at the research, there is not a great deal in the treatment area that seems to work very well.

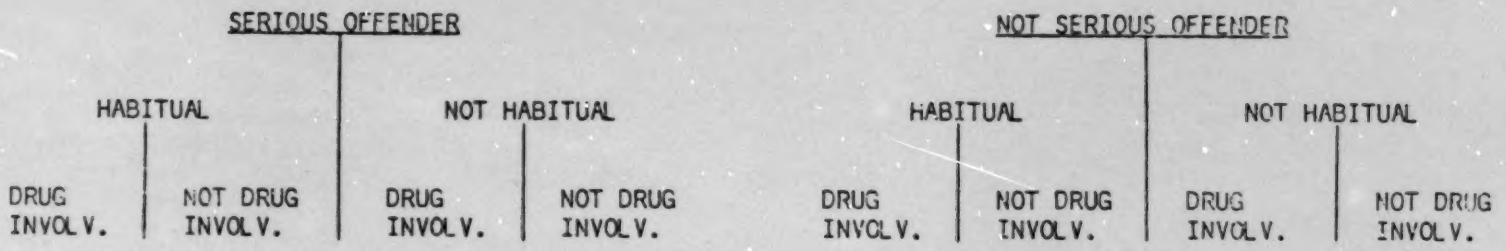
I want to talk now about the program called the SHO/DI Program--Serious Habitual Offender/Drug Involved Program. This program was developed by the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, in May of 1983. Shortly thereafter, five sites were funded nationally as research, test, and demonstration sites: Portsmouth, Virginia; Oxnard, California; San Jose, California; Colorado Springs, Colorado; and Jacksonville, Florida. The sites were picked basically because they have good police departments; remember, this is a law enforcement approach to the juvenile habitual offender problem. The government program manager for the SHO/DI Program is Bob Heck.

Each of these sites is trying, in the first eighteen months, to figure out some very basic things. One of the things each site is trying to do is to establish a data base on what the problem exactly is. One of the things I find very interesting is how little data is actually available. There are a lot of guesses as to the nature of the problem. In particular, there appears to be almost no serious research on the link between drug involvement and being a serious habitual offender. There are all kinds of guesses: some people say that juveniles are on drugs and they then commit crimes so they can get more drugs; some people say that it is the fact that a juvenile is on drugs that causes a juvenile to commit crimes in the first place; and probably some combination of the explanations is correct.

The first issue that had to be addressed by the five test and demonstration sites is the definition of the juvenile serious habitual offender, drug involved. A matrix was developed [Figure 1, Juvenile Offender Matrix] which is an attempt to at least begin to think in rough terms

FIGURE 1

JUVENILE OFFENDER MATRIX



1. Serious, habitual, drug involved
2. Serious, habitual, not drug involved
3. Serious, not habitual, drug involved
4. Serious, not habitual, not drug involved

5. Not serious, habitual, drug involved
6. Not serious, habitual, not drug involved
7. Not serious, not habitual, drug involved
8. Not serious, not habitual, not drug involved

about the juvenile serious habitual offender who is drug involved. As you look at this particular matrix, the first two categories are of primary concern to this national effort: the serious, habitual, drug-involved offender and the serious, habitual, not-drug-involved offender. The focus is clearly on the habitual part and on the serious part. Another interesting component is that each of these cities has created individual definitions. As these cities have tried to define for themselves what is serious, in some of the cities "serious" has meant crimes against persons; in the other communities, "serious" has meant, perhaps, burglary or larceny or crimes of this nature.

Once this kind of thinking was completed about the matrix, the next issue was, how can police departments effectively define the serious habitual offender? The definition, in at least one of the communities (Portsmouth, Virginia), is based on the Commonwealth Attorney's longtime program called the Major Offender or the Career Criminal Program. The basic design is that an individual would commit certain kinds of crimes and would receive a given number of points for those crimes. The points will vary by the nature of the crime and by its repetition. Points would also be given for factors such as the drug-involved component and for issues such as whether a firearm was used in the crime or not. Thus, a point system became one of the ways of identifying the serious, habitual offender.

Another way that can be used is what one might call an approach by reputation. That is, most of the research shows that, although a juvenile may be only charged for one or two or three crimes, that juvenile has probably committed numerous other crimes. If you talked to police officers, you would find out very quickly that police officers usually do not charge juveniles. I did a little survey in one of the police departments where we asked: "How do you usually handle juveniles?" I was not surprised when the response, by one hundred percent of the officers, was: "Well, according to policy and procedure." So then I talked to the people, one on one, and I said: "Look, what do you really do?" "Well, we send them home, because we do not feel like fooling with the paperwork." So that probably ninety to ninety-five percent are sent home, rather than handled by whatever policy and procedure might exist. So we developed this particular system. One of the communities may use it; other communities involved in the SHO/DI program may also use this system. This system can then be used to supplement the point system I discussed earlier.

There are a couple of closing issues I would like to address. The first is that the serious and habitual offender is a real problem in communities. That person is a problem in the sense of committing numerous, repeated crimes. The other point I want to address is that, when I talk about serious, habitual offenders in these communities, we may be talking about no more than twenty-five to fifty kids in the entire community. In San Jose, a community of about 600,000, this program may be directed towards no more than twenty-five to fifty kids in the community who are serious, habitual offenders by the criteria that community has established.

We are having some very serious problems in the program. One problem I have mentioned is the lack of data. Another problem is, and I am sure all of you are aware of this, there is no such thing as a juvenile justice system. What we have got are pieces of a system, each doing its own thing. Somebody

once asked me: "What is the hardest part about working with these communities and being field manager?" I replied: "The hardest part is talking to the different parts of the system and trying to tell them, 'Hey, you all really try to do the same thing!'" What I found is, and you will not be surprised by this, there is no communication among police agencies; there is very little communication between judges and police. Most police officers, as you well know, do not like the word "social worker" very well, and consider the human resources component of the program to be a very serious problem with which to deal. One of the things that we want to do is to see if we can help these five cities create a juvenile justice system.

One of the issues that has come up is, are we labelling these kids? I would say the answer is clearly no. We are not labelling them. Those of us interested in law enforcement are not labelling them. These particular juveniles we are talking about in this program have labelled themselves. I think we have to stop pretending we do not have a problem; we have got to deal with it effectively.

DR. CHARLES F. WELLFORD: Our next speaker needs no introduction, but I have to do it anyhow. I am sure what Dr. Pindur described is very accurate for the cities in which the project is operating, but one of the things that has happened in Maryland that we have emphasized throughout the morning session is the effort to bring together various segments of the adult and juvenile justice system to focus on the problem of juvenile repeat offenders. Rex Smith, the Director of the Juvenile Services Administration in Maryland, has been very helpful in the effort and has participated in the ROPE planning effort in jurisdictions in the state, especially in the experiment in Anne Arundel County. Mr. Smith will discuss what the Juvenile Services Administration is doing and what his thoughts are on this problem of identifying the juvenile repeat offender.

MR. REX C. SMITH: Frankly, I am not sure where to start. Those of us at this Conference today are probably in two different places. I guess if there is a clash of philosophy, so be it, and we will have to do something about it. There may be some clashes in practices, in procedures, and I suspect certainly in policy. I doubt seriously whether we really have a serious clash in philosophy, about values and our belief systems. We clash about such things as human dignity, clash about such things as, or expressed in, state and federal legislative policies and government philosophies around issues such as those that have been spoken to with the media coming out of the wake of the anniversary of the death of one of our presidents and the death of a leader in the community as far as minority rights are concerned.

I speak of that only in terms of what I believe, and I think what most of us in Juvenile Services believe: the business of the dignity of personkind and the rights of all people, particularly children in this instance, to have available access to opportunities for human growth and development. That sounds maybe very vague or generalized, but when you try to filter that down into who is and who should be defined as the serious repeat offender, I cannot help but start there, because all kinds of positive opportunities just may not exist

in some neighborhoods and jurisdictions. Those kinds of opportunities are things like free, easy access to housing, health care, legal services, education, job opportunities, and things like that.

I know I sound much too liberal to some people. But at the same time, I think I sound more like an American with those values and philosophies that we espouse. Those values and philosophies that I am espousing in policy are stated in juvenile court laws all over the United States and make the juvenile court a different kind of animal than the adult court. And on purpose. The juvenile court recognizes that it is a non-criminal system and that there are certain reasons youngsters do the things that they do, the majority of them. In most instances, youngsters do not have full control over those things that they do, those things which depend on some kind of either personal, interpersonal, or environmental factors that are affecting the youngster who gets into trouble and manifests his trouble by engaging in an antisocial manner. But we must also recognize that society has a responsibility to provide opportunities for that youngster who may not have had them available, or in some cases may have had them, but required further opportunities to remove some of his difficult problems. Our juvenile justice system is a remedial system, not a retributive system, because we believe in human dignity and that there is something sacred about childhood. I guess I get very disturbed in terms of where we are going, and not only with the Repeat Offender Program Experiment that I have participated in with Neil Behan in order to find out what he has been doing to protect the citizens of the state.

But I get concerned about those things. I think it is important for us to pay attention to public safety, but at the same time--somehow, with integrity and credibility--to find those youngsters in that system (or non-system) of ours who are a potential danger to public safety and deal with them as individuals. That is another part of what we must do in the juvenile justice system: provide individualized justice. We must be able to separate out that really bad actor who will tear your head off as opposed to a kid who is flailing all around the place, doing things, "messing up," so you do not throw the baby out with the bath water.

Let me set a couple of things straight, as far as I am concerned. I have been in this business--I was thinking about it the other day, and it scared me--about a quarter of a century. I do not think that those of us in this business are blind. I do not think we pretend about anything. I think those people out there--and I see the workers who are here, intake and probation officers, as well as their assistants--know darned well by reputation or by juvenile record who those serious actors are. I am not sure where that "benevolent attitude" is or whether it was pre-Gault, but we did a lot of things to children in a very negative and systematic way--as opposed to doing things for children--in the last seventy years. Perhaps we do not need a lot of study to back this up. We have tried many things that do not work, and we have failed. To suggest that those who have "diseases" ought to, in some fashion, not be of prime consideration for us service providers is rather insane.

I have said this before, and some of you will be bored by this, but I think that the juvenile justice system, in all its aspects, is very much

like--at least the part that calls itself treatment--a hospital. You have all kinds of in-patient services, out-patient services, a variety of all kinds of services. Some of them seem to work. And then you have the intensive care services, and you have shock-trauma units, and if one went to look in and find out how many people died in shock-trauma and how many died in intensive care, you would say that you were looking at that piece of the system whose failure rate is so high, let us close the hospital!

We are driven by our failures, and I have been in this business long enough to determine that, although I may not know these things as well as Charles does, or Marvin, or Wolfgang, there are a number of youngsters for whom we have failed and we will continue to fail because we do not have the social technology, as it were, to give them a reason. We have not gotten to them yet. What bothers me is that we are willing to identify those youngsters because of our concerns for the protection of society. We want to incapacitate these offenders but we are, in effect, to some measure throwing that life away. We also know there are varying degrees of incapacitation; you can, in fact, incapacitate somebody without having them locked up behind bars for eighteen years. And we are not very smart about that; we do not have very good technology developed, although there is a drive to do some special research and develop these things.

Which brings me to something else that I said earlier in my remarks on the platform, that this system and most systems, but particularly the juvenile justice system and the criminal justice system, operate in a political, social, and economic context. You can be sure that it is operated currently within a political context. You can be sure--and Al [Regnery] made no bones about it; he represents the posture of those in the administration which is simply kind of feeling on the part of a lot of people, including my father, who was a police officer in Washington, D.C. for thirty-six years, and complained to me bitterly, particularly when I was a juvenile probation officer. And that battle has been raging for a long time and I have not convinced him yet. I had better convince him soon because either he or I are leaving this world one of these days.

The purposes of the Repeat Offender Program Experiment have been pretty clear, and I am not so sure they are applicable to the juvenile justice system because of the way we try to operate that system--and because of the purposes, philosophy, and the policy of the juvenile justice system. The purposes of ROPE are to make the arrest, to make a good prosecution (and we see that federal grants are going in that direction right now), to get convictions, and to incarcerate. Now, the reason I spend my time devoted to working with Charles in Anne Arundel County on ROPE is because we know that the ROPE objectives are not quite meant for all juveniles.

But I do think that we can use ROPE as a strategy, and as a linkage between ourselves and the rest of the system. We need, in fact, as professionals in our particular field, to pay more attention to those youngsters who are high risk. I have no problem with that at all. I think we need more help with that to come to grips, logistically speaking, with those youngsters who are the highest risks. If that means increased surveillance, so be it. If it means increasing other kinds of programs and services to the families, in

terms of alcohol and drug abuse prevention programs and whatever else, I think that, too, should done. I think we have an absolute responsibility to public safety to have that happen. But, to have good insight into these youngsters, we need to be able to identify them.

Some of the zeal in terms of this repeat offender business is to be able to identify the repeat offender through some crystal ball. But, in a way, you could say almost every kid who gets arrested could be identified as a repeat offender. In some measure, I can conclude that at the occurrence of a first offense we can assume, by virtue of the research, that there have been eleven or twelve other offenses committed. Well, if we are going to assume that, then I think that every referral that Juvenile Services gets, all 40,000, ought to be considered repeat offenders. Or all 40,000 should not. And if we do that, then what happens to further research down the line that shows that after one contact, one arrest or even two, a large majority terminate their delinquent activity? We have seen in Anne Arundel County that about sixty-six percent had one police contact, and another eighteen percent only have two contacts. So that graph goes down and down until you get to that "over five contacts," which becomes a very small piece of the population. Now, I hate to hone in on that. I want to be very cautious, extremely cautious, when I move in on that area, particularly when I ask each and every one of you how many offenses you had prior to being eighteen that would, had you been caught, be considered a delinquent offense. If we had picked you up with the assumption that you had twelve other offenses and scheduled you into the system (which can do some funny things with you--there is some potential there to do some good and some potential there to do some bad), you can see what could happen.

We are trying to work on these issues in order to take some steps to improve public safety.

DR. CHARLES F. WELLFORD: Our next speaker is Judge Douglas Moore. Judge Moore is a graduate of George Washington Law School and has been judge of the juvenile court in Montgomery County since 1967. He is currently a member of the Juvenile Justice Advisory Committee for the Maryland Criminal Justice Coordinating Council. We have asked Judge Moore to speak to us, from his perspective as a juvenile court judge, on the issue of identification and the response to juvenile repeat offenders.

JUDGE DOUGLAS H. MOORE, JR.: My perspective, in part though not entirely, will overlap with what some of the other panels are going to be discussing, or are discussing at this moment, and I apologize to you. But I can only give you my views from my perspective as a judge.

Theoretically, when someone is identified as a repeat offender, or serious offender, or chronic offender, or whatever kind of term is used, that is usually done by the police, by the State's Attorney, by the Juvenile Services Administration. Individuals will inform me whether in their opinions he or she did commit the offense, and secondly, if so, what we should do with that particular child. (We can probably use the word "he" with some safety, because when we talk about repeat offenders, or serious offenders--at least in Montgomery

County, and I think it is true pretty much all over the state--we are talking about male juveniles. I do not see too many females who are repeat offenders; I do not see too many girl juveniles who are offenders, period, at least from the point of view of juvenile court.)

Statistics to the contrary notwithstanding, I am seeing more serious offenses committed by juveniles. Numerically, our caseload is about even in Montgomery County; it varies a little bit from year to year, but it is certainly no greater than it was. Yet the types of cases we are getting are more serious: multiple housebreakings, nighttime housebreakings, strong-arm robberies, some armed robberies when either the juvenile is under sixteen or he is waived back from the adult court. The offenses are more violent than they used to be. The strong-arm robbery is not simply a purse snatching; there is often a beating that goes along with it. An unnecessary beating (if you can say there is such a thing as a "necessary" beating), just like you read where someone is held up, he gives them the wallet, and they shoot him in the head for no reason whatsoever.

I should also say that the juveniles who commit these offenses seem to be a bit more sophisticated than they were sixteen years, and even as recently as ten years, ago. The housebreakers are more professional; they no longer go in and take what I call "the toys:" the transistor radios, the watches. They are able to pick out a person's good jewelry from the junk, costume jewelry. I could not do that. They know silver from pewter, and they know gold from whatever constitutes costume jewelry gold. They know how to dispose of it, how much to charge for it. So we are getting more sophistication. Why? I do not pretend to know the answer.

As I say, the fact that statistics may show that juvenile violent crime is down, I will keep saying over and over (I do not think it is an original saying): this is not going to comfort the victim. It does not comfort the eighty year old lady who is lying in the hospital with a broken hip to tell her: "Although your purse was snatched and you were knocked down and your hip was broken, do not worry about it, these kinds of crime are down fifty percent." I could go up to Rex Smith's house and say: "Mr. and Mrs. Smith, they really vandalized your house and stole all your silverware, but housebreakings in your county are down three percent this year." That would make you feel good, Rex, I am sure.

Despite this, I certainly do not feel that the juvenile system or the juvenile courts should go down the chute. I feel there is still a lot of hope for the juvenile system. (I am not saying this because this is my job, because if they eliminated the juvenile system, I would quietly move into the adult division and possibly do landlord and tenant cases for the rest of my days on the bench. I would be under less stress and have to attend fewer meetings.) I feel the laws in Maryland are good. It always bothers me every year that I must go down to the legislature to speak either for or against laws that are introduced to change the Maryland law. And I have thought for years that the law is, with some minor defects, very good. Good from the standpoint of the community, from the standpoint of the juvenile, from the standpoint of the juvenile's family, and from the standpoint of the court system. I do not think that, by meddling with the law, we are going to affect the community and, certainly, by some of the efforts to change

the law, you are not going to do anything to rehabilitate the juvenile.

You can take a look at rehabilitation from the standpoint of strictly selfish community interests, strictly hardnosed, punitive interests. Yet you are not going to keep juveniles out of their community forever. You have got to return them to the community, unlike adults where you do not necessarily return them to the immediate community. You cannot do that with juveniles. If you want to protect the community, you have got to do something with the juveniles if you are going to take them out of the community and place them in an institution.

I became a judge of the juvenile court back before we became interested in a formal method of identifying the repeat offender. Then somebody woke up one morning a few years ago and said: "Golly, we have got a lot of repeat offenders around." I have devised a system I think a lot of other judges use. I sit up on the bench, cases are called, a file is put in front of me. If the file is about three-quarters of an inch thick, or weighs more than a pound, I figure: "There is a repeat offender." You say: "Is this guy being facetious?" Yes, in part, but not so much as you may believe. I think perhaps that is as good an indicator of a repeat offender as any other study, or statistics, or methods, or matrices, or anything else you can come up with. With the exception, of course, of somebody who is in Montgomery County for the first time and has a substantial record in the District of Columbia, or in West Virginia, or wherever it may be. Obviously, we have to obtain his record for purposes of disposition, purposes of sanction. But whether he is labelled by the police or State's Attorney's method as a chronic or repeat offender, or whether I go by the three-quarter inch or pound-and-a-half system, that is probably not going to help me all that much, because I have to deal with that youngster within the resources I have available to me.

Let me become the house cynic for a minute. In sixteen years, I do not know how many of these conferences I have attended, but quite a few. I have also served on committees and task forces, and participated in legislative hearings. I am very much aware that most of what has been said today so far--I am not being critical, believe me, of those who worked to set up this Conference--has been said before. A lot of things have been said as to what we need. This has been said before. One of the speakers this morning talked about regional, or local, small training-school-type facilities rather than one big state institution as a training school, maximum security or not. The concept has been around a long time. This has been said before. I cannot quite see that here, sixteen years later, in 1983--almost 1984--we really have any more to work with than we did then. And I am not convinced, and I hope I am proved wrong, that this Conference is really going to change things, because other conferences have not.

We have less money to work with, and that is probably the bottom line. That is probably what is responsible for a great many of our weaknesses. Many probation officers' caseloads are bigger than they should be. We may be giving probation officers far more difficult kids to work with than they should have. We have fewer facilities, if you subscribe to the concept of institutions, which I use quite often. We lost the Boys Village, as far as a state training school is concerned. Also, the Victor Cullen School, which had

the best educational program in the state, bar none, and I am including our public school systems to which we pay a substantial amount of our tax dollars. The forestry camps have the best program I have ever worked with, again, barring any, including the private sector. I would like to see twice as many all over the state. We also lost the Maryland Children's Center, which was a secure, diagnostic facility, although in need of some improvements, probably a great many. So it does not do us a whole lot of good to identify the repeat offender, any more than we have already been able to identify him, and say: "Look, he has been in trouble before," unless we can do something about it through what is available to me and to Judge Rasin, Judge Wilcox, Judge Woods, Judge Tracey, and other judges who are sitting in juvenile courts. Essentially, my alternative to probation, which may not always work, is group homes, which may not be available because of money or overcrowding. Forestry camps, which I prefer above any of the other institutional settings, may not be available because they are small, only thirty to forty beds. Overcrowding also lessens the capability of the staff to work as effectively as they would like to.

This may be somewhat beyond the issues here, but I think it is significant: if we are talking about identifying the repeat offender, we have to look toward predicting, to the extent possible, who may become the repeat offender. (Again, I believe this is the subject of another panel.) I feel we need to concentrate more closely on the child in need of supervision (CINS), the out-of-control runaway child, not just everyone who runs away from home. We need to look more closely at some of those who we have called, perhaps somewhat loosely, the "super" CINS child: the youngster who is completely beyond parental control, who is into drugs, alcohol, prostitution. Look at that individual and see if there is some way we can work with him and the family to offset what may be almost predictable delinquent behavior. Beyond that, we need to look at the child who comes under Social Services jurisdiction, who has been sexually or physically abused or has a completely emotionally neglecting family. I am obviously not suggesting that the training schools should be utilized for this sort of function, but I still think we have to take a close look at those juveniles, and work more carefully with them with the objective in mind to try to keep some of them out of the juvenile court system and even the adult court system later on. A great many of those who are seriously disturbed or are serious delinquents or repeat offenders have a history, even though it is not necessarily recorded, of out-of-control behavior, truancy, perhaps almost a total absence of education.

The unfortunate thing is, as I think many of us would agree, we pigeonhole kids and their families; we categorize them. As Rex Smith has said: "What is a repeat offender?" What you call a repeat offender, I might not call a repeat offender, someone else here may call a repeat offender, and so on down the line. So we also pigeonhole people in this system whether they are delinquents, children in need of supervision, or children in need of assistance. In many cases, they are all three. In many cases, there is simply an entire family that is in need of assistance: the treatment services for that family and for that child are really lacking.

Probation officers need to look at their philosophy, in many cases, in preventing a person from becoming a repeat offender or committing further repeat offenses. What I see is a trend to recommend probation in almost every

instance where it is a first offense in the court--not necessarily the first offense, but the first offense in the court--regardless of the severity of the case. But each case stands by itself. This has happened in a case of four counts of manslaughter. Or housebreaking of a next-door neighbor: they were supposed to watch the neighbor's house, but they broke into it and did some $20,000 of damage and stole silver and jewelry. Or assault and battery of a next-door neighbor with a baseball bat, broke his collarbone. The Juvenile Causes Act, as I read it, says that we have to consider rehabilitation. If I cannot, in good conscience, keep an individual in the community, I am supposed to put him in an institution where he will be rehabilitated. I have always thought, and I think most probation officers feel, that the training school aim is to be rehabilitative, not punitive. But these are in conflict. So I send him or her to the training school or forestry camp for rehabilitation but it ends up being termed as punishment. So, we are getting mixed signals.

In concluding, I think what obviously we are going to have to do is not just have a Conference here and commiserate with each other and hear various views, and then simply go home and say: "I agree" or "I disagree" with any group. But I do believe, as I said earlier, that things have not changed all that much. They are going to have to, because it does become very apparent to me that we are going to lose the battle. I support the Juvenile Causes Act. I think it is a good law. We should be able to work within it. I do believe, however, that we are going to have to convince the public and the legislators (who are, of course, responsible to the public) that we are not just going to talk among ourselves, that we are going to take some steps to try to protect the public. We can protect the public without making any drastic alterations in the law or doing any such thing as sending more kids into the juvenile or adult justice systems. No matter how you look at it, changing the law to put more juveniles automatically into the system is not going to be doing anything.

DR. CHARLES F. WELLFORD: One of the roles that the chair of a panel like this is supposed to play is to summarize and integrate the comments of the panelists. If you consider the agenda for this panel, you will see a number of issues that we need to address. While we have been addressing some of these issues this morning, it might be useful, as a context-setting device for your comments and discussion, to look at them and see what we might be able to conclude.

First, we have considered the legitimacy of the term juvenile repeat offender, given the philosophy of the juvenile justice system. In setting up this Conference, we anticipated much more discussion and concern about the concept of juvenile repeat offenders than we have seen. As Judge Moore just said, since he has been on the bench, he has seen and identified repeat offender juveniles. Their existence is not problematic. Dr. Pindur indicated that while some people do not want to admit it, throughout the juvenile justice system, whether it be researchers, administrators, judges, or juvenile advocates, there is an increasing recognition today that the juvenile repeat offender is someone who needs to be better understood.

Another issue we have considered is the incidence of serious, repeat juvenile offenders. One of the few most stable findings emerging from research on juveniles is that approximately five percent of juveniles account for over fifty percent of the delinquencies. Six percent in the Philadelphia Cohort I; 6.2 percent in Cohort II; five percent in the Ohio project. In the work we did in Anne Arundel County, 4.6 percent of the juveniles were classified as repeat offenders. Using different data and research locations, researchers continue to reach the same conclusion. I think this is critical, because as Judge Moore indicated, resources for juvenile justice are not expanding. We are not talking about identifying a new problem for which we can go to the federal, state, or local governments and get new money. It is not there. We are considering whether we can identify a small segment of the delinquent population to which existing resources could be better targeted.

Next, we considered whether we are able to accurately identify the juvenile repeat offender. While we have identified a set of criteria in our work in Anne Arundel County, they are at best suggestions. Our research continues with a study in which we are following up a group of juveniles referred to Juvenile Services prior to age fourteen. Still, we are a long way from identifying the criteria that meet the many concerns people have raised.

Finally, there is the issue of "labelling theory" and the concept of "self-fulfilling prophecy." Earlier today, there was a question from the floor in the opening session to Marvin Wolfgang concerning this issue. He suggested that his research indicates that labelling is not an important factor for the repeat offender, because by the time a person is doing his third, fourth, fifth, or tenth offense, the notion that we will somehow change his self-concept by the way we respond is not logical; it does not seem to matter. This needs to be given further consideration.

I am suggesting that there is considerable consensus emerging in this meeting with regard to the issues this panel is addressing. We have taken the important first step of organizing our knowledge about repeat offenders. Let me now open up the floor to your questions, comments, or observations.

QUESTION: Anticipating coming down here, I got some figures. Last Friday, we had seventy-six felonies committed in Baltimore, half of them by juveniles; eight homicides over the weekend, three of them committed by juveniles. And if you heard the morning reports, three juveniles stole a taxicab in the City, roared to Baltimore County and into Howard County. There was a shoot-out by a fifteen year old with police officers in the juvenile division. So I have a little difficulty in what you mean about these children and the effect we are going to have on them. Let me get back to. . . .

MR. REX C. SMITH: Let me answer that before you go further or "get back." There is a part there that I want to answer, because it is very demagoguic. Do not tell me about those kids who, you and I will agree, "ought to be incapacitated; they are a public safety threat" and try, by virtue of a statement of that sort, to paint every other kid who comes into the juvenile justice system with the same brush, and expect them to respond to the system which ought to be the same for every other kid. I am not going to

argue with you about the incapacitation of that kid or about that kind of heinous crime. That is my gut reaction were I the victim or were I not the victim.

QUESTION: Exactly my comment. How do you address the point of the repeat offender? I think we have to be careful how we define the repeat offender and for what purpose we define the repeat offender. Someone made the statement today that they are disturbed that we do not have a uniform definition for repeat offenders. Now, in Baltimore City, the juvenile system does have a repeat offender program. We have a set of criteria by which we identify the repeat offender. Let me point out, we use the identification and the system for case management, and only that. The individual is not labelled per se a "repeat offender" for punishment purposes. There are no special laws that deal with repeat offenders; it is the same juvenile law that applies to any juvenile. I use the definition for case management. I could expand my criteria or narrow it. Now I have a set of criteria which permits me to identify about 1,000 habitual offenders in the City. I could not have handled 2,000. And I had the resources to handle more than 500.

So, I am suggesting to you that the criteria you use must be flexible enough to give you a manageable workload that does not go beyond your resources. If you are going to use the label "repeat offender" merely to identify people for some other purpose, then perhaps you will have a different set of criteria. But be careful of trying to get one set of criteria to label all repeat offenders, regardless of the purpose for which you are going to do it.

I would like to address a question, therefore, to anybody on the panel. When we in ROPE are thinking of repeat offenders, for what purpose are we labelling or identifying these people as repeat offenders? What are you going to do with them? Case management? Identification for prediction? Just what is the purpose of the repeat offender program in Baltimore City?

MR. REX C. SMITH: I have responded, in the juvenile system at least (as opposed to the adult system), that it ought to be, really, case management. The Repeat Offender Program Experiment (ROPE) book, which you may have, gives the objective of ROPE. An objective is incarceration. It was written that way. That is not just case management. Case management means that you really do something, given where that youngster is and what the public safety needs are in that point in time and space on December 8, 1983. That is why I have a serious problem with matrices, because the juvenile justice system is an individual-based system. It is an offender-based system, not an offense-based system. Most matrices that define the repeat offender are strictly offense-based: you are "it" if you have X, Y, and Z in terms of offenses. Where you may identify him on the basis of an offense-based mechanism, you should then superimpose the offender-based consideration of what you do with that particular person. What Charles is doing with our staff in Anne Arundel County, what Jane Whitt is doing in Montgomery County, is to identify and have a definition, but then go to an offender-based consideration of what alternatives there are with respect to public safety and the needs of that particular youngster. I think that is the reason that I would say it should be case management.

DR. WOLFGANG PINDUR: I think I have a slightly different approach, although our moderator said we all agreed (I am happy to hear that people are agreeing with some of my thoughts). I think we need to have an offense-based system, rather than an offender-based system. My primary concern in this is that, from the point of view of the victim of a crime, the victim of a serious crime is the victim of a crime, and an offense is an offense. We are talking about very serious, violent offenses in particular.

And one other quick comment in terms of the criteria: in the five cities I am working with, the number of juveniles who fit the criteria is between twenty-five and 150, depending on the community. We are talking about a very, very small percentage of the juvenile population.

DR. CHARLES F. WELLFORD: Let me say something about the ROPE concept as it has been developing in Maryland. The end result is not meant to be incarceration. In the guide to the ROPE experiments, and as it has been operationalized in the various jurisdictions, the end result is to do something about that individual who is identified as a repeat offender, whether it be after incarceration with some kind of treatment program, or, as we stressed in the case of juveniles, within a community context through prevention.

The second point is that the case management notion is, I think, the appropriate one for repeat offender programs, but it is not case management in the sense of the prosecutor's case management plan, or the police case management, or the corrections division, or Juvenile Services. It is the assertion that we can have an integrated case management plan across all of those segments of the system.

Finally, let me comment on the idea of matrices or guidelines systems. If you are from Maryland, you are familiar with the Sentencing Guidelines Project of the Judicial Conference. It is not offense-based or offender-based. It is a matrix that combines those two dimensions, in which you pay attention both to the offense and to the history of the individual who is currently before you. I think that kind of combination makes better sense than using any single dimension.

QUESTION: With Chairman Owens here, I cannot resist the opportunity to make two definite suggestions. One would be that we recognize the fact that the law provides that once the court obtains jurisdiction over a child, they have that jurisdiction until age twenty-one. As a practical matter, that really is probably only eighteen and three days, maybe sometimes eighteen and one-half. However, the Court of Special Appeals does not recognize that, and it has on many occasions said, in determining whether or not a waiver was improperly done, that since we have jurisdiction until twenty-one, we should have exercised that jurisdiction. That would be number one. I think that needs to be changed so that that age be reduced to nineteen to be more practical.

Number two, I would suggest that a very good thing to do with repeat offenders would be to waive not the offense but the child, so that once a child is waived, he is waived for all purposes in the future. That child will not be able to defeat the system by committing a new offense and going

through the entire process of having a new intake hearing, having his case held at intake, having it ultimately come to court, having another waiver hearing, and spending four or five or six months coming through the process to the point where the waiver hearing--the new waiver hearing, in fact--is held. Waiver the child as opposed to waiver the offense, I think, would be a far better way of doing it, and would benefit the victims. It would certainly benefit Rex, because then he would not have to take someone who had been waived, been admitted to jail, and have to co-mingle that person with the detained population at the training school. Those are just two positive recommendations that Chairman Owens would love to hear, I am sure.

JUDGE DOUGLAS H. MOORE, JR.: This points up again a very real problem that we need to get a handle on. Judge Ross is obviously alluding to some specific cases in the subdivisions. We will waive jurisdiction on a very bad actor, in our opinion. He is a typical repeat offender: he has been in court how-many-times, he has been through the training school and forestry camp, and he is now before us on half a dozen housebreakings and maybe a crime of violence. We waive jurisdiction to the adult system, and we see him out on personal bond to begin with. When he is tried, he is maybe given probation, maybe at most a few days in the county jail, perhaps a few months in the work-release program at the very most. Sometimes this deters our waiving jurisdiction. There have been times, and I am sure Judge Ross has said, as I have: "I think he fits the criteria for waiving, but I am not going to do it because then what will happen to him in adult court? Maybe nothing, so I will keep him and put him in the training school for a while." And this is not necessarily a criticism of the adult system, but I think it points out what the adult system is looking at. We are looking at a very hardcore offender, a very sophisticated kid, a tough guy. The adult system is looking at a little fellow, who maybe just started to shave, and in the context of what the Circuit or adult District Court sees in the twenty, twenty-five, or thirty year olds, this guy does not look so bad. They are not about to send him to Hagerstown or even the county jail. They put him out on probation and he becomes even more of a menace. If he is under eighteen, as Judge Ross says, he will come right back into juvenile court, and then has to be mingled in at the detention center with juveniles until we hear the case.

QUESTION: I would like to ask either Rex or Judge Moore to comment on the Chronic Offender Team in Montgomery County. I do not know if that is part of ROPE or not. Do you feel it is appropriate that citizens who do have a genuine concern make a recommendation as serious as waiving a child without having any firsthand knowledge of the child, without ever having met the child, without ever having even talked to the child's worker?

MR. REX C. SMITH: No. I think it is healthy that citizens know just what is going on in the system and how it works and try to have some input to it, but I do not think that that really affects Judge Moore's decisions or should affect our decisions in terms of our professional recommendation as to what should happen to that kid or youngster, as far as I am concerned.

QUESTION: It seems that the recommendations are made through the State's Attorneys' office.

JUDGE DOUGLAS H. MOORE, JR.: Maybe I missed your question. You used the word "citizens." Do you mean laypersons are involved in this?

QUESTION: I am not sure who is on the. . . .

MR. REX C. SMITH: State's Attorneys, all the people within the system are in on this.

AUDIENCE: I would like to speak to that point. No citizens make that recommendation. Once a month in the State's Attorneys' office in Montgomery County, we have a meeting which I chair as a representative from the State's Attorneys' office. It is attended by Rex's Jane Whitt of Montgomery County, by Dr. Joseph Porrier, who is head of the Diagnostic Team, and by Lieutenant Robert Hill, who is head of the youth division of the Montgomery County Police Department. Each of us researches a list which I have prepared from the police, flagging the candidates I consider to be serious or chronic. We each bring research to that meeting, share it, and then come up with a suggested recommended disposition. If any of us is at variance, we note that in the letter and we send the letter to Judge Moore and Judge Tracey, recommending a disposition and our research. But it is not a citizen group. The State's Attorney's Diagnostic Team is not composed of laypersons.

PANEL B

PREVENTING JUVENILES FROM REPETITIVE DELINQUENCIES

MR. EDDIE HARRISON: I would like to welcome everyone to this panel on preventing repetitive delinquencies. I feel we should use as much of the time as possible to share what we know, and what we believe must be done to prevent repetitive delinquency. There are programs and approaches we can use to assist delinquent kids in becoming productive members of our communities. You will hear more about these programs as we go along.

On the panel is Lt. Charles Codd who is with the Baltimore City Police Department; he has been working with the Limited Adjustment Program for the past seven years or so. Next to him is Ms. Dorothy Siegel, Vice-President of Towson State University and former chair of the Maryland Juvenile Justice Advisory Committee. Dr. Gary Gottfredson is a Research Scientist at the Center for Social Organization of Schools at the Johns Hopkins University. Dr. Margaret Ensminger is a professor in the School of Hygiene and Public Health, also at the Johns Hopkins University.

I would like to limit the remarks of our panelists to eight to ten minutes each, so we can have time for an exchange with the audience. I would like you, the audience, to see the panel as a resource, because they will be talking about some exciting things. I would like you also to see each other as resources. As we talk about strategies for the prevention of delinquency, we would like to hear from you in terms of some of the things that you are doing or have done. I would like to present first Lt. Charles Codd of the Baltimore City Police Department.

LT. CHARLES CODD: Thank you, Mr. Harrison, fellow panelists. Today's young people are indeed very unique. They are more sophisticated, I believe, than they were several years ago. They mature at a very early age. Recently, I was in a convenience store on the way home. In getting in line to pay for a gallon of milk, a young lad of about eight or ten brushed up, saw this grey thatch, and said: "Hey, mister, are you a grandfather?" I was about ready to lay my grandfather pictures on him, when he raised his hand and said: "Look, my grandfather is not here and I need a quarter." So, they are very sophisticated today, and I think we have to be in a position to deal with that kind of thing. We are here to talk about preventing juveniles from repetitive delinquencies, and I think we need to use that resource, that young person's mind, in doing so.

In 1969, the Baltimore City Police Department arrested 10,640 young people for all offenses. Then, the available school population was 189,000. In 1975, we arrested 24,683 young people, but the available school population was only 169,000. So we saw a very dramatic increase in the number of arrests that occurred while the school population was decreasing. In 1982, we arrested 13,553 young people and had an available school population of 120,000. In 1975, fifty-two percent of the total crime rate was laid at the door of juveniles; in 1982, it had decreased to thirty-three percent.

I would like to tell you about my agency, and its endeavors to fight against that tripled arrest figure over the six years between 1969 and 1975.

I would also have to say that there are many, many agencies trying to do exactly what we were endeavoring to complete. Our records involving these young people indicate there were about 1,000 to 1,400 habitual offenders, and that is using today's criteria for that description. The Baltimore Police Department put together a diversion program to intervene in what we believe is a crime cycle. We have records of young people that clearly demonstrate that they do escalate in their criminal activity. We have tried to intervene in that crime cycle before it becomes too serious. Our criteria offenses for intervention are rather innocuous in nature and not very serious, although there are a few that do indicate that the individual so charged does have some serious problems behind him. The underlying idea is to take the less serious offenders and attempt to "square them away" before they commit more serious offenses.

It is a totally voluntary program. Five people have to agree. The child has to agree. The parent has to agree; we could not do it without parental support--they absolutely must participate in this program in order for it to be successful. The complainant has to agree; when we hear complainants say we police officers are insensitive to the hurts and losses of complainants, we like to say we give them an opportunity to allow us to do something with this youngster before it costs us <u>all</u> more money later on. The arresting officer must agree. Lastly, the Youth Services officer must agree. He is a specially trained individual who has been selected because he had a degree in psychology, sociology, or criminology, and who has been psychologically tested to determine his compatibility for working with youth.

The process is simple. One of the thirty-four criteria offenses is committed. The first intervention is warning and release, simply an admonition to the youngster not to continue the kinds of activities he has been involved in. The second intervention technique is counselling, where we see this youngster for ninety days. (It is possible, with permission, to go up to 180 days.) We start out in this limited counselling mode and try to determine what the root problem of that child is. That takes time, because all these incidents are multifaceted. You might have a youngster who has possession of alcohol, and when you talk to his parents you realize he has two very good role models who are consuming alcohol in large amounts.

We may want to intervene in different ways. A case I can recall very clearly involved a sixteen year old young lady, caught shoplifting. She was a good student in school, did not miss any school, and came from a single-parent family. She simply had too much time on her hands after she arrived home from school until her mother came home from work. The officer handling this particular case met with this young lady on four occasions and it took a while for her just to mention that she was interested in the legitimate theater. Subsequently, the officer found a theater for her to work in. She began sweeping floors, painting scenery, moving scenery. Then she got a walk-on part, and is now a professional artist. Obviously, all the cases are not that successful, but I have to tell you that only 393 of the young people that we have put into the limited counselling mode failed to do what we asked them to do.

The next process would be to refer this youngster to an outside agency, the agency that fits the needs of this particular individual. We have a list of approximately forty-five agencies that we use all the time. The kinds of work they do is varied. We have agencies that will treat medical, mental, and dental problems, or provide single-parent counselling or leisure-time activities.

Another option would be to send the youngster to a work project, in which there is an opportunity for him to make money legitimately and in that way not be part of a crime pattern later on.

In almost eight years, we have had approximately 43,000 young people referred to the program. We have accepted roughly 20,000 of them and kept them out of court. I guess if you get down to the bottom line, eighty-seven out of every one hundred young people we see, we do not see a second time. We only have a thirteen percent recidivism rate. (By our definition, if we pick up a youngster today, and we pick him up again tomorrow for any reason, he is a recidivist; he does not have to be adjudicated.) You might think that this particular activity is strictly for a large department, but it is my pleasure to tell you that smaller departments have accepted it and put it to successful use.

MS. DOROTHY G. SIEGEL: Let me start by saying that when we plan for prevention of further delinquency, I think we frequently forget that one of our objectives in dealing with the delinquent is not to make life worse. Sometimes we arrive on the scene and, instead of improving the situation, we are part of a deterioration process. Sometimes the helper unintentionally makes families and children grow angrier and feel more demeaned because he can not prevent further deterioration.

I do believe that as we enter into the planning and decision making for juveniles, each plan needs to be evaluated not only for the objectives you hope to reach, but for all the consequences it engenders. Is it worth the consequence? Is the intervention, in itself, going to result in a long-term benefit to the client we came to serve? One of my favorite intervention techniques is doing nothing. In many cases, families are capable of coping with their problems and need only to be reminded that they are capable of it. We really do not have to intervene. The other extreme is where there is nothing we can do and we go from pillar to post. It may have been better for that child to have remained in that one group home, where there was some attachment, than to have moved among ten homes in which there were a series of failures.

We have to take a look at the long-term impact on the children with whom we are dealing. At the beginning of every plan, we need to evaluate whether doing something is better than doing nothing. Like a zero-based budget, you carefully evaluate the costs to the juvenile, to the family, to the community, to the victim. All of that needs to be taken into consideration. You can gather that I am particularly interested, in view of what I am saying, in the long-term impact of the marvelous intervention we have just heard about. There are many people out there capable of coping

effectively and we do not intervene. We need the least intrusive ways for us to reach our goals. Is the plan sensible? Can we justify it to the recipients? There has been easy rhetoric in the field suggesting that if we are nice to people, suddenly their problems will go away. That really does not happen.

Now, once the plan, the intervention, is made, is it fair? Can we hold the people accountable to its implementation? There are lots of fancy plans written: how many of them have been implemented? How many of them have made clients accountable for it? Without the measure of accountability, the plan is useless. It is down the drain. What the client has learned is here is another useless agency "intervening" for no purpose. Nobody benefits unless we hold people, the worker and the client, accountable for the way the plan is implemented.

About six or seven years ago, the City of Baltimore began a project called the Child Management Team. Its purpose was to identify more frequently those children in some need who would eventually come before the court, but who are multi-agency children, children who are possibly of limited intelligence, children who are dependent, children who are emotionally ill. What would happen is that they would begin with one agency, then would be freed from service or dismissed, then would reappear in the court system in another place, where another agency would then pick up. The intent of this project (it is still in existence) was to coordinate all these services. The plan was that all these agencies would sit together and provide a continuity of service, a continuity of supervision, a continuity of planning, so that, instead of agencies being in competition with each other, they were working together with this one child. Sometimes one agency would become the responsible agency, even though the child may have legally belonged to another agency. To some extent, I think, that is one way we can become more accountable in the care of children.

DR. GARY D. GOTTFREDSON: As you can see from your program, the Conference organizers have presented us with an interesting and inviting smorgasbord of topics to discuss. Presented with this array of topics, I feel a bit like the hungry ant at the picnic: Where shall I begin? I would like to say something about several of these topics but I will not take a very big bite out of any of them.

I will say a few words about early intervention and how the justice system and schools can handle delinquents and might approach their tasks a little more effectively in this area.* I am going to start by giving a plug for theory. Now, I know "theory" has a bad reputation. "Theory" will never solve the problems we face; we will have to solve the problems. The best I can hope to do is suggest some ways theory is helpful. One of the most valuable insights we get in the behavioral sciences is that it is not very useful to ask the question: "Why did the person do it?" The question should be "Why does not everybody do it? Why does not everybody behave in more brutish, evil, and nasty ways all the time?" My preference for this latter question is that it focuses our attention on the ways we control or restrain behavior, rather than looking for the motivation to deviate. The problem of

*See Appendix II.

crime control and reducing the risk of recidivism becomes a problem of looking for ways to restrain a juvenile from future misconduct.

Now, most of us engage in some form of bad behavior some of the time. There is probably no one in the room who has not, at one time or another, engaged in behavior that is illegal, that is regarded as immoral or objectionable by someone--usually your mother. But most of us restrain ourselves from misconduct most of the time because we have some powerful stakes in conforming. We have something to lose by misconduct--jobs, the esteem of colleagues, self-esteem, our freedom.

One of the ways of thinking about reducing the risk of future recidivism and future delinquent behavior involves the search for effective restraints against misconduct. Ultimately, we want to develop in youthful offenders attachments to valued others whose approval and affection may be temporarily withdrawn when the person engages in misconduct. We want the person to see that his or her career prospects will be diminished by delinquent behavior. We want the person to incorporate some common assumptions about appropriate behavior in his or her conscious and unconscious routines for making split-second decisions about behavior. How can we possibly do that? Well, your mother did it, in your case, so there must be a way.

One simple set of ideas comes from the work of scientists who have developed techniques to reduce aggressive behavior and stealing. This work suggests five things that are necessary to modify behavior. First, the persons interacting with the young offender must be able to recognize the deviant behavior when it occurs. Second, these persons must watch for the deviant behavior. Third, they must punish it when it occurs. In psychological jargon, this is called contingent punishment. (I am going to say quite a bit about punishment, and I want you to catch the distinction between the way I use the word and the way it was used by the gentleman who spoke at lunch.) Fourth, this response to the behavior should occur a high proportion of the time; it should be frequent. Fifth, an alternative way to gain rewards that the misconduct has gained in the past should be provided. In other words, reward alternative behavior. When delinquent behavior persists, one of these five conditions is unmet.

What are the roles of the justice system, families, and schools? They must identify, watch for, and systematically punish instances of misconduct. They should respond to the behavior on a contingent basis. They should try to reward alternative behavior. Families, schools, and the justice system are not doing a good job with these five things. I think this situation arises for several reasons.

First, the family. It is often noted that about half the crimes committed by young people are committed by about six percent of all offenders. What is less often noted is that about half the crimes committed are probably committed by people from about five percent of all families. Some families do not know how to recognize delinquent behavior. They do not have enough adults in the home to watch for it. They do not have enough power, or resources, or influence effective to punish misconduct or reward alternative

behavior, or they do not have the requisite knowledge or skills to apply these procedures frequently and contingently. Research in applied behavioral analysis implies that families can sometimes become more competent in these ways. Parents can learn to apply the five principles.

The schools also often fall short in applying the five principles for restraining behavior. Our research and experience working with schools imply that they often have vague rules that are poorly understood by students and teachers, that rule enforcement is inconsistently applied, and only a limited range of responses to student conduct is even attempted. But the prospect is good that schools can make rules clear, enforcement more consistent, and the range of responses broader. By paying close attention to the application of the five principles in the schools, misconduct can be reduced. Promising techniques exist for increasing the appropriateness, immediacy, and scope of the schools' responses to student behavior. One Baltimore junior high school we are working with now is experimenting with procedures designed to follow these five principles in response to behavior.

The justice system, on the other hand, is constructed in such a way that it may be nearly impossible for it to intervene to reduce recidivism. Remember the five criteria for effective intervention in restraining delinquent behavior? The weakest link in the chain in the justice system is the third part of the formula, providing contingent punishment.

To explain why the justice system is ineffective in preventing recidivistic delinquent behavior, I have to say a few words about punishment. Psychologists have studied learning for decades. We know that by manipulating environmental rewards and punishments, it is possible to regulate behavior, and we know it is easier to regulate behavior if the environmental responses have certain characteristics. We know something about effective rewards and punishments. Now, the general public has some pretty bizarre misconceptions about what behavioral scientists mean by "punishment." Punishment is defined as an environmental event that reduces the behavior it is associated with. By "punishment," I emphatically do not mean forcing juveniles to work hard in a hot, mosquito-infested environment, or anything like that. In the sense that I am using the word, punishment does mean the withdrawal of desired privileges--snacks, television, the use of the car, or the freedom to engage in desired activities--for brief periods of time. We know some other things about effective punishment. It should closely follow the behavior it is designed to reduce, and it should occur automatically and rapidly a high proportion of the time.

The justice system uses punishment in entirely different ways. Some of these ways are self-defeating. They remove some potentially effective tools for reducing subsequent delinquent behavior. The justice system metes out punishment to fit the crime, or to incapacitate people society is afraid of. It does this slowly and deliberately. When and if a young person is arrested for a crime, he or she may not be prosecuted. In the majority of the cases, the persons are neither caught, prosecuted, or convicted with subsequent punishment. In psychological jargon, the punishment is not contingent on the behavior. The justice system's punishment does not match

the psychologists' definition of punishment. It does not immediately follow the behavior and, if anything at all is learned as a result of the punishment, it is most likely that punishment is unpredictable. In short, the slow pace of processing, the philosophy of just deserts, and the attitude expressed earlier by Mr. Regnery work against the effectiveness of punishment in the justice system.

A second characteristic of the punishment supplied by the justice system renders it impotent as a rehabilitative tool. Sentences are so long that it is impossible to use the withdrawal of freedom as an effective sanction. Remember that one characteristic of effective punishment is that it is brief and that it is frequently applied. For example, when a behavioral technique known as "time out" is used in changing behavior, a young person engaging in disruptive behavior will be sent to a room with nothing to do for a brief period of time, as brief as five minutes. The "time out" is time out from positive reinforcement, time out from the influences of the environment that have been reinforcing or sustaining the behavior. This "time out" is punishment. When the "time out" is over, the person has a fresh start. He or she must be treated as if the incident were forgotten. This "forgetting" serves an essential purpose. It gives the young person something to lose by subsequent misconduct.

There is a possibility that the justice system could find ways to preserve due process and simultaneously administer briefer and more appropriate punishments, but realistically we had better place our bets for prevention elsewhere--in the family and in the school.

DR. MARGARET ENSMINGER: Some early childhood characteristics have been linked in major studies to juvenile and adult criminality. The result is that despite a number of severe blocks, both practical and ethical, the primary prevention of crime may be an idea at this time that is only experimental. The biggest breakthrough has been longitudinal studies in which a group is watched over time to see which factors are identified in the beginning and linked to outcomes in the end. I want to describe the major results of a longitudinal study that I have been involved in and make several suggestions, based on this study, for the next stage in prevention research.

The study took place in Woodlawn, which is a black, poor neighborhood in Chicago with very high delinquency rates. My colleague and I assessed all the 1966-67 first graders in that community and followed them over their school careers until they were adolescents. We then examined some of the outcomes of adolescence, delinquency and other phenomena, to see if any of the early characteristics we looked at were important to their later outcomes.

First of all, we found that males rated as aggressive by their teachers in first grade were two to three times more likely to be the most severe delinquents ten years later than those rated as not aggressive. This is a consistent finding in most of the longitudinal research that has been done to this point: agressiveness identified early is a high risk factor in leading to delinquency. Aggressiveness is sometimes used to indicate assertive-

ness; I am not using aggressiveness in that way. I am using it here to indicate behavior such as hitting and bullying other children. Aggressiveness is also related to other kinds of outcomes such as drug use and later psychological problems.

We also studied the importance of some family characteristics, such as what adults are present in the home, and how strongly the families are bonded to their child. What our results indicate is the importance of the interplay between family and school. Many of the family characteristics, by themselves, had a rather weak relationship to later delinquency. But what they did seem to do was to affect the vulnerability to some of these other conditions that contribute to delinquency. The kind of family is very important in terms of the aggressive males' vulnerability to become delinquent adults later. The family's importance, at least in neighborhoods such as Woodlawn, may be enabling the child to do well in school, including enabling the child to cease what might be early aggressiveness.

The implications of some of these results from the study I have been involved in and from other longitudinal studies are really setting the stage for further prevention research. I am not suggesting that any widespread programs should be instituted nationwide. Rather, I am suggesting that well-designed programs should be tried on a small scale and, based on results, should be carefully and systematically evaluated. Then, based on the evaluations, new programs should be designed.

One obvious approach to try is, what would happen if the behavior of early aggressiveness was responded to early? If we modify early aggressiveness, early in the child's life, would that reduce later delinquency and drug use? Bearing in mind some of the comments of the other participants, would there be any unanticipated outcomes of this kind of program?

A second focus could be on learning problems. Our work and the work of others have shown that most aggressive males also had learning problems. The real question we had was, was the early aggressiveness in fact a response to not being able to succeed at the tasks in school that children are expected to succeed in? We all know about the widespread failure in the education system in nearly every public school system. If we increase very specific learning programs, would that reduce later delinquency? What is needed is an intensive program that is well designed, well specified, that will follow children through the education system, and one in which learning will be the focus. Would that have an impact on later outcomes, such as delinquency or drug use?

A third prevention effort could be focused on helping the families do better to help their children in schools. Our results and other results indicate parents are very important in terms of enabling their children to succeed in school. Children who are high risk juveniles often have families who do not know the teachers' names, who feel uncomfortable in the school setting, who are not really able to promote or enable their child to succeed in the public school system.

I am suggesting these programs as experimental ones that should be systematically evaluated, not tried as panaceas, but tried in terms of responding to early characteristics that several longitudinal studies now have shown lead to later delinquency.

MR. EDDIE HARRISON: Thank you. I did want to take as much of an opportunity as possible to get some feedback, to get some dialogue going. I think what the panelists have said about preventing the re-occurrence of delinquent behavior is important. They are prevention schemes that go across a broad spectrum. There is no one cause of delinquency. Likewise, we can not pinpoint any one solution. I would like to entertain questions.

QUESTION: I am with the Habitual Offenders Unit of the State's Attorneys' Office in Baltimore City. I also disdain the type of rhetoric you have suggested you have heard today, but not for the same reasons. I think that too often, no matter which camp you are in--I hope we are all in the same camp, actually--you hear statements from what you might call the liberal side, people who think they have the answer, and then you hear statements from the conservative side, from people who think they have the answer. I think that with this problem, as with all other social problems, we need to be more flexible. There are no answers to this problem that I am aware of.

The question I have is relative to the kids who are fifteen and sixteen, who have been through the diversion programs, who have been prosecuted as juveniles, who have been on probation, or who have been to Montrose or the Maryland Training School. They are in for their eighth or ninth or eleventh or twelfth delinquency. My question is: Do we waive that person to the adult system, or do we finally admit there is nothing left for that person in the juvenile system?

MS. DOROTHY G. SIEGEL: There are several of these kids that you are describing that at age eighteen give up criminal behavior. There is a certain portion of them who get very smart about the fact that at age eighteen they will graduate to a tougher system. I do not have any problems in long-term commitment of kids who we have not been able to keep successfully from intruding in everyone else's lives. The question is: Where are we going to put them? If we are going to put them into the adult system, I am concerned because the adult system does not work. If it worked, I would say: Let us waive them all. But since it has not worked, I am a little bit concerned about getting those kids in earlier than absolutely essential.

DR. GARY D. GOTTFREDSON: One interesting thing about the notion that we have tried everything in the juvenile system and that nothing worked, is that very few of the programs for juvenile and adult repeat offenders are really strongly defined, well defined programs in the first place. We talk about community treatment as if that meant something very precise. In fact, when we talk about counselling or community treatment, it is very much like having some kind of an allergy and going to a physician who writes out a prescription for some "stuff." Now, you would not be very satisfied with that. You would want to know: What stuff? How often? How much? By what

means of administration. For what problem? I think it is far too early to think we have exhausted our possibilities, although many of us have worked hard.

MR. EDDIE HARRISON: I think somewhere within your question is the answer to your question. When we work with individuals on a case-by-case basis, and after doing so find that using the "least restrictive alternative" for a particular person is no longer appropriate, waiver may be in the best interest of both the child and society because the juvenile system does not have the capability to work with this individual.

MS. DOROTHY G. SIEGEL: I do not think we can pretend that we know how to turn a delinquent around, and I think there has been a failure to admit that. We do not know an awful lot about this group of people, about what will change people for whom the value system of antisocial behavior is very acceptable. We do not know much.

QUESTION: A number of reputable social scientists have stressed that American schools tend to emphasize individual competition. When you have individual competition, some kids are going to win and, by definition, some kids are going to lose. Some kids have poor scholastic aptitude or misinformation on scholastic subjects that make them do poorly in the schools. I am wondering if that does not suggest that the emphasis should be less on changing the kid--which may not really be possible--and more on changing the schools. There should be less emphasis on individual competition and perhaps more emphasis on activities in which kids who are not scholastically inclined can excel: for example, vocational activities.

DR. GARY D. GOTTFREDSON: Very good, I could not agree with you more. The rewards and the punishments come from the environment and I really did not mean to suggest focusing on individuals but rather focusing on environmental support structures. There have been notions of structuring competition in different ways so that everyone has a chance to succeed. That is very, very important. One of my colleagues (Robert Slavin) has been working for the past ten years or so on methods that can be applied by schools, which is what you suggest.

DR. MARGARET ENSMINGER: The change should be in the kid and not in the schools. While individual competition can be stressed less, I do not think we should go into programs that result in kids graduating who can not read at the functional level needed to participate fully in society. I agree with you on the one hand, but I think that there still should be an emphasis, a change in curriculum, so that people graduate from our system knowing how to operate in the way they need to in order to function in society.

QUESTION: Dr. Ensminger, I just have a question about your Woodlawn study. How did you control the variable concerning the family? How did you account for what families displayed a strong family bond or commitment? How did you operationalize this variable?

DR. MARGARET ENSMINGER: A number of different ways. For example, in terms of the relationship between the family and the school, whether the parent got into the school's classroom, whether the parent knew the child's teacher's name, the evaluation of both the parent and the child in terms of what their family relationship was, how much time was spent with the child. That is a number of different ways.

QUESTION: How would you get to families who do not value education?

DR. MARGARET ENSMINGER: In our community, which is a low-income, high delinquency community, we found virtually no families who thought education was unimportant for their child. The lack was not in terms of their value of education, but their feeling of discomfort at operating within the school system. Parents felt unwelcomed, unable to participate in schools. Many of them had not had much education themselves. I think there are very specific things that can happen within the classroom, with teachers operating with parents, to change that situation. In terms of inviting the parents in, giving the teachers a lot of support, I do not think that is impossible at all. We found no support for the notion that families thought schooling for their child was not an important issue.

QUESTION: Doctor, in view of your other remarks about reading and ability, is there any concerted effort in public education to test all students for disabilities such as dyslexia, and hearing or sight disabilities? If they find them, is there some sort of compensatory operation to take care of it?

MS. DOROTHY G. SIEGEL: I think I can speak to that. I think schools have been making some gigantic efforts. Large amounts of money have been applied in special education areas. I do disagree with one of the other panelists. I have to begin with the assumption that we do not know how to teach everybody how to read. We promise it, but we do not know how. It is in that, that we make the families and children responsible for our professional failures. We simply do not know. We have to find a place for everybody in society including the nonreaders.

LT. CHARLES CODD: One of the things we found in our particular program was the opportunity to identify that youngster who does have a reading problem. Our officers have been trained in the use of the reading achievement test and when we find learning difficulties, we become advocates for the school system. We approach the school system and have them make the same test, and then get the appropriate treatment the child needs. Additionally, most of the youngsters we are seeing have a degree of frustration with schools. They are not able to read well and this leads to frustration in the classroom. One of our responses was to train our officers as tutors. Now, they do not all try to teach people to read from word one, but they help them to adopt and achieve some degree of success frequently.

QUESTION: Lieutenant, I am aware of what law enforcement does. Instead of the reaction after the problem is disclosed, I want to know if the educational system is doing anything before a child gets into this situation. It would seem to me that perhaps we should really examine all of the children in the school system and find out if they have these disabilities and then correct them. Some of the kids' families do not have the money to correct them.

AUDIENCE: To a limited extent, that is already been done. I believe it is what is called the Early Identification Program in the school system. There are programs statewide, at least in the elementary schools, that address the issue of early identification. Of course, now that you have identified the person, what are you going to do? But there is an Early Identification Program in our state schools.

QUESTION: In addressing the problem of repeat offenders, I think we must recognize the fact that we, too, are "repeat offenders," as individuals and also as agencies such as the schools. It would be nice, perhaps, if you could have a conference with school personnel, who are working with them everyday. It seems they are somewhat in absentia. Having worked for thirty-eight years in the schools, in inner high schools up in Buffalo, New York, having counselled after having taught, and having worked with suspension hearings, I would like to pass on just a few ideas for your response.

It seems to me that we should go back to the early roots of the problems, before the young people enter the school. Perhaps we should give more support to some of those programs such as Headstart. In the cases of parents who would like to be more effective parents, particularly where there is poverty, allow them somehow into our work programs, so they can be in their homes as much as they need to be to help their children.

Once they are in elementary school, it seems that we could better utilize our nurses, because nurses could handle many of those problems, mental not just physical. Many of those problems go back to cases of epilepsy, asthma, and some of those young people slide over very easily into the taking of drugs after they have taken medication, and sometimes they will die from it.

At the high school level, again, it is really laughable that so many reach high school and have been passed along. What a sense of failure they must have! And then they drop out. There was a person earlier today who mentioned truancy in connection with juvenile delinquency. I think our treatment of truancy leaves a little something to be desired.

On the whole, I would like to say that instead of working out our frustration and desperation and instead of thinking in terms of punishment, as though that is the only cure--I do not think it is a cure, myself--I think we should look for potential, and look at our young people for what they can do, and see something positive. And do not stop there. I think you have to reach out and really try and then, perhaps, as Dorothy Siegel said, if we

can not do anything, at least not do something that is going to be harmful.

MS. DOROTHY G. SIEGEL: Funding for prenatal care is something we must not neglect, because we pay for a lifetime for that. We do not know how many aggressive children are the result of malnourished mothers. We do know that there is a correlation and that early childhood nutrition programs for pre-school intervention, Headstart programs, and day-care services are very proactive programs. I appreciate your comments, but take it back to prenatal nutrition, please.

MR. EDDIE HARRISON: I would like to leave you with a thought on the notion of punishment. Within the corrections arena, there is a longstanding cliche that whenever we deprive persons of their liberty and freedom by sending them to prisons or institutions, we send them there as punishment, not for punishment. I would like to thank you very much for your attention.

PANEL C
LEGAL AND ADMINISTRATIVE ACCESS TO AND USE OF JUVENILE RECORDS

MS. CATHERINE H. CONLY: I would like to welcome you to this panel, where we are going to be discussing issues surrounding the availability and use of juvenile records for processing juvenile and young adult repeat offenders. I am Catherine Conly, as Richard Friedman earlier told you, and I will be moderating this panel. We have three very distinguished speakers today. What I would like to do is introduce them and then I would like to spell out a couple of general topics that may help you formulate reactions to what the panelists have to say and questions that you would like to ask them later.

Let me start by introducing the panelists in order of their speaking appearances. To my left is Ms. Natalie Rees, who is a professor of law at the University of Baltimore School of Law. Natalie is also a private attorney and has practiced in the juvenile court system for many years. She has also published extensively in the juvenile justice area. She serves on the Juvenile Justice Advisory Committee of the state of Maryland and is teaching courses at the present time on family and juvenile law.

At the center is Mr. Alexander Palenscar, who has recently been appointed the Deputy State's Attorney in Baltimore City. But Al is not new to the State's Attorneys' Office there or to the state of Maryland. For ten years, in fact, he was an Assistant State's Attorney in that office where he served as the chief of the juvenile division and implemented an Habitual Juvenile Offender prosecution unit. Prior to coming to Maryland, Al served for thirty-two years in the Judge Advocate General's department of the U.S. Air Force, so he has had an extensive background in the law.

To Al's left is Delegate Joseph Owens, who is also an attorney, so we are well represented with legal people today. Delegate Owens is perhaps best known as a member of Maryland's House of Delegates, where he has served since 1971. He represents the 19th district in Montgomery County, Maryland, and has chaired the House Judiciary Committee since 1973. Delegate Owens is a member of the Maryland Juvenile Justice Advisory Committee and currently he is also serving as a member of the Joint Committee on Juvenile Facilities. (The state of Maryland is studying the possibility of building a maximum security juvenile facility.)

As you can see, we have a very distinguished group of individuals. Because they are all lawyers, we should have no difficulty in understanding some of the legal issues that are attached to the subject of the availability and use of juvenile records. But I think there are a number of specific issues that motivated us to organize this panel. I would like to review three with you and ask that you keep them in the backs of your minds as you listen to the presentation.

One, what is the impact on the juvenile justice system of changing the availability of juvenile records? What could changes in current policies with respect to the availability and use of juvenile records do to our interpretation of the law? Two, what do we know about the types and quality of juvenile records that are currently available and what do we know about the timeliness of their availability? Three, what problems do issues of quality cause for our introducing juvenile records into the processing of juveniles and young adults?

With respect to the law, Maryland is not really unique in the way the juvenile justice system is set up. There are two goals, essentially (I know Natalie will talk about them, probably fairly extensively). One goal is protection of the child and the other goal is protection of society. Traditionally, as part of the goal of protecting the child, protecting records has been considered very important: keeping records separate, keeping them confidential, even sealing these records. But recently, one interpretation of protecting society has been to make records more available, or at least available in a limited format for processing habitual juvenile offenders and young adult career offenders. Consequently, what people are faced with are two goals that are probably fundamentally in opposition, especially on this particular issue. When one considers that we are talking about a small group of offenders, which I think everyone has tried to impress upon you today, there are certain concerns about changing our entire juvenile justice system because of a current fad or focus on a small group of habitual offenders.

With respect to the issue of the sources and quality of Maryland's juvenile records, there are four sources of varying quality. We have police records, court records, state's attorneys' files, and Juvenile Services Administration records. Some of those are less available than others because of the way the law is structured, but all of them, as we have discovered over the last year, have problems with respect to completeness and accuracy, particularly with dispositions of juvenile cases.

Finally, what problems does this whole question of making records more available generate for processing? There are certainly some administrative headaches that this issue stimulates, but there are also some really legitimate legal questions about making records available in the processing of juveniles when those records were not available previously (I believe Al will speak to that somewhat today). But of greater importance to the whole issue of repeat offender processing is the issue of introducing juvenile records into the processing of young adult offenders. Traditionally, as we all know, there has been a juvenile justice system and an adult system. The two have been separate and there are some very legitimate and logical reasons for continuing that separation. Some have argued that the logical bridge between those two systems is <u>not</u> the sharing of records. Others argue that we have created a two-track system of justice whereby a young eighteen year old person may be treated essentially as a first offender in the adult system despite the fact that he or she may have an extensive history of juvenile delinquency. This is an issue that generates a lot of philosophical concern and possibly today, if we are lucky, we will have some heated debate here from our panelists.

I would like you to consider those issues, those very general issues, as you listen to what the panelists say, and I also urge you to formulate some questions and perhaps even opinions of your own that we could share here in this forum. I would like now to turn to Natalie Rees and ask her to give us some background on the juvenile justice system and the law in Maryland.

MS. NATALIE H. REES: While people are getting their hands on the handouts,* I will tell you what they are. These are excerpts from the Maryland statute and the Maryland Rules. I thought that we should begin with a common understanding of what you can and can not do under the Maryland law. This, of course, is going to be my interpretation of what the law says.

The sections that are numbered 3-802, 3-811, and so on, are sections from the Juvenile Causes Act in Maryland. The Juvenile Causes Act is part of the Courts and Judicial Proceedings Article which comes to us from the legislature. In the back of the handout, you will see the Rules. The Rules are from the Maryland Rules of Procedure, of which the 900 Rules specifically apply to juvenile court.

Section 3-802 is the purposes section of the Juvenile Causes Act. It is the most important section because everything the juvenile court does has to be in terms of, or in compliance with, the purposes the legislature has set forth in 3-802. The first line states exactly what the juvenile court is all about, and it ends with "consistent with the child's best interests and the protection of the public interest." That sets out, right up front, a theme that recurs throughout the entire statute. If you had the statute here in its entirety, you would see that phrase repeated over and over again. There is a balancing of two interests, the child's best interests and the public safety, or the interests of the public, throughout the Juvenile Causes Act.

Secondly, one of the purposes of juvenile court is to remove from children committing delinquent acts the "taint of criminality and the consequences of criminal behavior." This is sometimes set forth as a justification for why we have a juvenile court system separate from an adult system, because you obviously cannot remove the taint of criminality and the consequences of criminal behavior in criminal court. (Sometimes this is also a justification for less due process or fewer procedural safeguards, but that is certainly, I think, not the intent of the legislature.) Keep this "taint of criminality" provision in mind when we talk about opening up juvenile court records for criminal prosecution purposes.

Thirdly, the juvenile court is bound to conserve and strengthen the child's family ties and separate a child from his family only when necessary. This is the concept of the "least restrictive alternative" that Dr. Ohlin talked about this morning. Fourthly, 3-802 provides standards of care for after the child is removed from the home. The important ones for the purposes of our discussion today are number one and number two.

*See Appendix III.

In 3-811, certain information is identified as not admissible in certain kinds of proceedings. These are protections that are afforded to juveniles. First, information that is gathered at any kind of intake proceeding (informal adjustment, or preliminary or further inquiry) is not admissible in an adjudicatory hearing in juvenile court--that is the trial--or in a criminal proceeding prior to conviction. If you have a pen in your hand, circle the word "prior to conviction." If there is a formal study or examination of the child, it is not admissible at an adjudicatory hearing in juvenile court, with a few exceptions, and it is not admissible in criminal proceedings prior to conviction. If you make statements at a waiver hearing, and that includes the parent or the child, it is not admissible in an adjudicatory hearing in juvenile court or in a criminal proceeding prior to conviction.

Why do I keep saying "prior to conviction" over and over again? Why does the statute keep saying that? There is a common misconception that a juvenile hits the adult criminal justice system at eighteen and is, so to speak, a virgin. It is a common misconception that juvenile court records are miraculously closed and are never re-opened again after eighteen when the person enters the criminal justice system. It is not true. Juvenile court records are admissible after conviction. At a sentencing hearing, a juvenile record is admissible in its entirety. Records are not closed at age eighteen. A person does not get to the criminal justice system at age eighteen as a virgin: the entire juvenile record is admissible after conviction. The theory behind that is, once you have been convicted of a crime in adult court you have, in effect, forfeited your right to have the protections that you are afforded as a juvenile.

Section 3-824, on the next page, tells us more about the juvenile court system. An adjudication of delinquency in juvenile court does not carry with it the "taint of criminality and the consequences of criminal behavior" as the purposes clause sets forth. Under 3-824 (a) (1), an adjudication of delinquency is not a criminal conviction. It does not carry with it the civil disabilities that criminal convictions may carry (for example, a felon may forfeit his right to vote if convicted). Nor can juvenile court assess points on driving records; that is left to the Motor Vehicle Administration. Note, too, under 3-824 (d), that you cannot be disqualified for state civil service as a result of a juvenile court delinquency adjudication.

Section 3-824 (b) stipulates the admissibility of the juvenile court record. It is not admissible in any criminal proceedings prior to conviction. After conviction, it is admissible. A prior juvenile delinquency record is not admissible in a subsequent adjudicatory hearing when the child comes up before the court; but, at the disposition hearing in juvenile court, the entire juvenile court record that preceded is admissible. The juvenile court record is also not admissible at any kind of civil proceedings outside of juvenile court. There is an exception in 3-824 (c) to "not admissible in criminal court prior to conviction," and that is where perjury is an issue. Then it is admissible at the time of the trial.

Section 3-827 is not commonly used in juvenile court, and most people do not think about it as a confidentiality section. I do consider it here as a confidentiality section because the juvenile court has the power to bring any person, other than the parent or child, before it and pass what is commonly known as a restraining order to prevent actions that would be detrimental to the child, that would get in the way of carrying out a treatment plan, that would defeat the execution of a court order. I think this section could be used in some situations to close juvenile court records.

Section 3-828 is titled "Confidentiality of Records" and is, of course, the most important section. Formerly, it was titled "Expungement and Confidentiality." There was a time in Maryland when you could expunge a juvenile court record under certain circumstances. That is not possible anymore. Your juvenile court record does not go anywhere. It stays, and it can be admitted into evidence against you in a criminal sentencing hearing or in a juvenile court disposition hearing.

Police records and juvenile court records, under 3-828 (a) and (b), are confidential. However, certain individuals do have access to police records and juvenile court records. Those individuals are the Juvenile Services Administration officers, law enforcement officers involved in investigation and prosecution, state's attorneys, the child's attorney, and the other named individuals. Only upon good cause shown and an order of the court can juvenile court records or police records be opened prior to those other situations that I have already described.

Under 3-828 (c), there is a provision for the sealing of juvenile court records at age twenty-one. The language of the statute is mandatory, and it is reinforced by Maryland Rule 921. It appears in reading the statute and the Rules together that the intent was for all juvenile court records to be sealed at age twenty-one. However, reading that section in conjunction with all the other sections seems to imply that there are many situations where the records can be opened and made available. Section 3-828 (d), (e), and (f) are new additions to the statute: (d) was added in 1982 and (e) and (f) in 1983. These represent what I consider to be a negative trend: the erosion of the confidentiality of juvenile court records. Notice under 3-828 (d) that the Maryland Division of Parole and Probation now has access to juvenile court records. But not just records of adjudications of delinquency. It says charges or adjudications of delinquency. Every charge that was ever brought before a juvenile is now available to the Division of Parole and Probation. Similarly, the Maryland Division of Correction, when it is carrying out its statutory duties, has access to juvenile court records. For criminal justice research purposes, juvenile court records are available, but researchers may not use the juveniles' names.

We have to ask ourselves why the Maryland Division of Parole and Probation or the Maryland Division of Correction needs to look at a juvenile's record and to have statutory authority to do that, when the record was admissible after conviction. At the time that this individual was convicted of a crime in criminal court, they could have looked at the record then. It is available in pre-sentence investigation reports. I do not know why

we needed that statutory change except to make it clear that there is a trend towards erosion of confidentiality of records.

Finally, under Rule 897 and Rule 1097, if a juvenile court case goes up on appeal, the record is not produced in the child's name; the child's name is kept confidential because appellate records will be public.

Now here is the bottom line, in my view, having taken you, very quickly, through the statute. I think the Maryland legislature has adopted a statutory scheme which does three things. First, it balances--remember the balancing act that I talked about earlier--the best interests of the child and the protection of public safety. It does not attempt to create a priority between either of those two. Secondly, the statutory scheme establishes a separate juvenile justice system, where juveniles are going to be treated differently from adults. That is a basic premise in the statute. Thirdly, it affords an opportunity to the vast majority of juveniles going through that system to be rehabilitated. Contrary to all the negative things we have heard today, I am one of the people who believes that the juvenile justice system is working, and that it is possible to be rehabilitated through the intervention of the juvenile court system.

What are the consequences to those three issues if we eliminate confidentiality or even continue this pattern of erosion in the confidentiality of juvenile court records? The first thing that I think will happen is that the current balance between the best interests of the child and the public safety will be shifted. Instead of having co-equal priorities, we will tip the scales of justice in the direction of public safety.

Second, I think that the differences between the juvenile justice system and the criminal justice system will be lessened to the point where the two systems are really going to look the same. If the juvenile justice system is going to become a mini-criminal court system, the next logical question is: Why have a separate system at all?

Third, I think that ninety percent--the vast majority--of the youth who are benefitting from juvenile court jurisdiction are going to be penalized so that we can prosecute more effectively that ten percent, if and when they hit the criminal justice system.

Fourth, I think that it would require major changes in the current law in order to effectuate some of the changes that are being suggested. The argument has been made that confidentiality and information-sharing are administrative problems: if we could link up our computer systems, or open up new lines of communications, or keep better records, etcetera, then it would all be solved without legislative change. I disagree with that. In my brief review of the statute and the Rules, I was trying to show that the notion of confidentiality and the importance of confidentiality are part of a pervasive legislative scheme. I do not think that we can do any of the things that are being suggested by administrative means. We will have to make legislative changes, and that means a change in what has been the policy of this state up until now.

MR. ALEXANDER J. PALENSCAR: There are certain goals that we try to accomplish in the administration of any judicial system. The juvenile system is no different. We have the responsibility to protect the community, together with the responsibility to protect the child. Professor Rees has talked about a balancing act and we try to maintain this balancing act, as much as it is possible. But you have to be careful that you do not destroy the protection of the community without gaining any real benefit for the juvenile.

On the issue of the use of juvenile records in a criminal proceeding, the law does state that you may not use a juvenile record of a delinquency in any criminal proceeding prior to conviction. But that pertains to court records. I have in my office probably the best consolidated juvenile records in this state. As to juveniles in Baltimore City, I can pick a file, and I can tell you the history of this juvenile from the moment he entered the juvenile court system up to the present moment--every appearance, what he was charged with, what happened to him, and some of the little notes that the prosecutors wrote as to why certain things took place. I can share that information with any police agency, with any of my own prosecutors, without any problem. These are my personal records.

We use those records prior to conviction, admittedly. For example, when I have a young juvenile in the adult system, and he is charged with robbery, an automatic adult jurisdiction case, my prosecutor will want to know whether he ought to accept a plea to a lesser offense and go with probation. He has got an absolute right, in my judgment, to look at the in-house records that I have, to see that this kid has had four prior robberies, that he has spent some time in the training school. How ridiculous it would be for him to say: "Fine, I know all this so I will go along with your plea." We are not going to fly in the dark. It becomes absolutely essential in the proper administration of the criminal justice system, in the adult system, that we know all there is to know about this individual. This information is used by my office prior to conviction. I think it is an absolute must. In fact, my prosecutors must--they have no option--take a look at the juvenile records of every young adult up to the age of twenty five.

What about bail hearings? A bail hearing is a criminal proceeding. The statute says I can not use this data in a bail hearing because it is a criminal proceeding and it is prior to conviction. We are trying, and have tried, to get some legislative changes to permit that. Why? What takes place at a bail hearing? Well, in a bail hearing, if you are going to consider recognizance, you not only consider whether the individual will be there for trial, but you also consider whether he is a danger to himself or the community. For example, I know this individual in the juvenile system has been on probation four times for burglary, and here he has turned eighteen, and he is now in the adult system. Is it not a little foolish that I can not look at his record to decide whether he is a good risk for recog? He has already been on probation four times for burglary and he has continued his burglaries. That has not stopped him. So, to me, it is outrageous that I can not consider that in the administration of justice for this young adult.

Let us not overlook the fact that we are now dealing with a young adult. We are talking about the use of this record in the adult system. I am well aware of what the statute says. The other side of the coin is that I agree that the child should be protected from his own juvenile foibles, predilections, misconduct, mischievous acts--label it however you will. But why? So that when he becomes an adult, his childhood follies do not follow him through life into the adult system. But what about the juvenile who now continues his criminal acts? Do we continue protecting him from his juvenile "follies?" He is continuing this criminal course through his adult life. Will not the community not be protected? Has he not forfeited this so-called childhood protection now?

There are some commonsense approaches that we must take when we consider this system. When the juvenile justice system was first initiated, we were talking about a very paternalistic system. There were no defense counselors, there were no rules of evidence. We surrounded the child, for the good of the child and the community, with certain privileges, if you will. And then came in re Gault and some other decisions, and, as Natalie said, whether we like it or not, the Supreme Court has now made this into a sort of mini-trial. We have got every rule applicable to the juvenile system that we do in the adult system, with the exception of motion practice and jury trial. Otherwise, it is the identical system: same rules of evidence, same proof beyond a reasonable doubt.

Lastly, let me mention that we also fly in the dark in the juvenile system in terms of impeachment. Let me explain what we mean by impeachment. When we use a prior record for impeachment, we do not use it to influence the determination of guilt or innocence. We do not say: "Judge, because this man committed burglary last year, he is bound to have committed this burglary before you." We instruct the jury in the adult system, and the judge knows this, that when you consider a prior delinquency in a proceeding for impeachment, you do it only to test the issue of credibility. Is this witness telling the truth? A kid is being adjudicated for burglary; he takes the stand, he tells whatever fantastic story he likes, and we cannot tell the court: "Your honor, this is the fourth time. This kid has five, four, three prior burglary findings of delinquency." What would the judge do if he were told that? He would probably say: "I wonder if the truth of his story is not questionable." He has a right to consider that. We do it in the adult system everyday.

There are two ways to find truth in a proceeding. One is by looking at the prior record of the defendant, or in this case, the respondent. The other is cross-examination. Those are the only tools we have that are permitted to try to determine truthfulness and credibility. Why do we not want to find the truthfulness of a juvenile proceeding? We do in adult proceedings. And I am even willing to limit that impeachment, not to any witness who is a juvenile, but merely to the respondent. I think if he is the respondent, if he is the one accused of the act, surely his credibility, if he takes the stand, is very much an issue. Now, he may not take the stand, if he knows that he can be examined on his prior record.

For all these reasons, it is my judgment and opinion that, in order to preserve the integrity of the juvenile system and to protect the community, in the administration of the court and in the official process, I think we must use these records.

HONORABLE JOSEPH E. OWENS: I am in a sort of familiar position. Quite often in bills before my committee, I hear from Professor Rees and Mr. Palenscar. And usually they are not on the same side. But I am in my usual position: I have heard them both and I disagree with them both. I think that one thing you have to look at is, what exactly is this statute for? What the statute says--if you really read it--is that you do not publicize juvenile records. That is all it does. The idea that you need to use it before conviction in a court proceeding--you can not do that in adult proceedings unless for impeachment. So it really is not that much different.

As far as Professor Rees saying that the legislature is manifesting a "pervasive scheme," I think the term was--trying to destroy the juvenile justice system by adding these various laws--that is not true. What has happened is that for years the system decided, not because of the law, that they would not use the juvenile records. Even when we first passed this law, we did not hear anything about it in the adult courts. But in the last few years, there has been an attempt to bring in the juvenile records, not through any change in the law but through a change in procedure by the state's attorneys and especially by the courts. When they put the juvenile records into the Sentencing Guidelines, that was a radical change, in my mind. Why this tendency on the part of both the courts and the prosecutors to bring juvenile records up more often? Public opinion, I think. We hear that the legislature reacts to public opinion but I can tell you that the courts and the prosecutors react twice as fast as we do because we very seldom pass laws on the whim of the moment.

I would say that the legislature should probably take a good look at the statute and see just what we have. But I think the effects of the present law are merely that you do not publicize juvenile records.

I have problems with their use at all, even though I do not agree with Professor Rees that they should never be used. I have no faith in juvenile records. In adult court, the initial charges are sort of weeded out by the prosecutor and grand jury as it goes along, ending up with what looked like the biggest crime of the century being pled to larceny under $300. That is what goes into the record. Not so in the juvenile system. There, all you come out with is a finding of "involvement." Admittedly, there may be a number of charges of involvement in this, involvement in that, but it really does not indicate how serious the offense was.

I do not agree either with the use of juvenile records at bail hearings for young adults, partly because the record is untrustworthy, partly because I do not think they should be used. What the kid did when he was fifteen may be irrelevant to the current offense at age twenty-three or twenty-four.

I also have problems with using records for impeachment. The only reason the attorney is trying to impeach the witness was to show his credibility? Somebody must be kidding! The purpose is to get before the trier of fact, especially if it is a jury, that if this guy has done it six times, he had to have done it this time. I do not think this should happen to a juvenile. I can tell you that there are many defendants in adult courts who are afraid to take the stand and tell the truth, because if they have a bad record, they are not going to be believed and it is going to affect the finding of innocence by the jury.

I think the legislature should take a look at this statute and tighten it up, perhaps, a little. But I really do not see any big changes in the law. The things that have been going on recently have not been because of any change in the law. To respond to the statement by Professor Rees, the Division of Parole and Probation and the Division of Correction have a right to get to juvenile records because I think they could be considered as being under a law enforcement agency, the Department of Public Safety and Correctional Services.

I think the law as it is in Maryland is probably about where it should be. How it is used is another question. I think we should go over it and I think we should decide, are we trying to keep the law enforcement agencies from going overboard? I do not think we were when we passed this legislation. We just felt that a juvenile's record was not something for public consumption. We wanted to protect the juvenile, really, from the community, not protect him from law enforcement agencies. I think that the law had a different effect eight or nine years ago because you people used it differently. That is about where I stand. As far as jumping off the deep end or making any big changes, I think you will find it is not the law that has changed, but the application of the law.

MR. ALEXANDER J. PALENSCAR: I was a little surprised at Delegate Owens' comment that impeachment is all right in the adult system but not in the juvenile.

HONORABLE JOSEPH E. OWENS: No, I did not say it was all right anywhere. I just said that what it was used for was not so much for credibility but to make sure that everybody knew that this guy had committed other acts.

MR. ALEXANDER J. PALENSCAR: We permit impeachment in an adult case where the penalty can be death, and yet we are a little reluctant to use it in the juvenile system where the most the respondent can get is a tour of the Maryland Training School. It may be legal fiction, but it is not unusual for a comment to be made and, as Delegate Owens and Professor Rees know, the judge says to the jury: "The jury is instructed to disregard." That may be legal fiction, but we indulge in it nonetheless. I do not see any reason why we should draw a distinction between the two systems regarding impeachment, if in fact what we are after is the credibility of that particular individual.

QUESTION: Probation is not working for juveniles, particularly when they are on probation and commit another offense. Should not the public be protected from the juvenile who commits a burglary, is given probation, and then

is taken in on another burglary? How do you think a juvenile record should be used?

HONORABLE JOSEPH E. OWENS: I think the records of Juvenile Services or anyone else are not that reliable. It is also said you do not want to do anything to the person who has straightened out, but how do you distinguish whose juvenile records you show at bail? In my county, they will know that if he is a local, if they have not seen him too often, and if it is a misdemeanor, he is going to go out on his own recognizance. If it is a serious offense, he will not. I just do not think that you can distinguish between the cases you would bring me, because juvenile records are very nebulous on occasion. I know this is a repeat offender thrust, but when you start talking about juvenile records, there is no distinction in the record of whether he is a repeat offender or not a repeat offender.

MR. ALEXANDER J. PALENSCAR: Let me add something to that. I cannot speak for other jurisdictions, but in Baltimore City, if a person is charged with robbery with a deadly weapon and the plea negotiation comes out to larceny, or assault, I know that he is found delinquent of the assault and not of the robbery with deadly weapon. Our system is sophisticated enough to be able to tell us exactly the charge that he was found guilty of or pleaded to, not just the nebulous term, "delinquent."

MS. NATALIE H. REES: I have to disagree with that. You say: "Let us look at the juvenile record at a bail hearing. But a juvenile record does not match up with criminal court records. It is a different language, a different recordkeeping system, a different philosophy. Al said something about the two systems being the same. They are the same at the adjudicatory hearing stage, at the trial stage. The only issues there are, was this offense committed and are there any valid defenses to it? However, the systems are different at the disposition or sentencing stage. Disposition in juvenile court is not to determine what punishment should go with which offense. Disposition in juvenile court is, is this child a delinquent child? A delinquent child is a child who has committed a delinquent act and is one who needs the treatment, guidance, and rehabilitation of the court. In the criminal court, that is not what goes on at the sentencing hearing. You committed the offense, it was intentional, therefore, X sentence. So you cannot look at a juvenile court record and say: "This kid has five criminal-type convictions." They do not match up. I have a lot of problems with what kind of "record" you would even look at at the bail hearing were you to agree philosophically that you wanted to look at it in the first place. It is not going to give you the kind of information that you are looking for.

MR. ALEXANDER J. PALENSCAR: I can tell you that he was found guilty or pleaded to assault and therefore he was found delinquent, or he was found guilty of burglary and therefore was found delinquent.

QUESTION: With all due respect to this dilemma that we are facing--and I certainly agree with a lot of the things that I hear about the repeat offender, the person who we know is a danger to society--one thing bothers me that I think we need to be extremely cautious about. I know that parents who lack parenting skills, as we may know them, rely quite a bit on the

police department to do a lot of their work. I know of instances where people have locked their kids out of their house, so a kid breaks into his own house, he is charged with burglary, and he ends up with a burglary conviction. If we have a person who has done this two or three times, and if every time that he goes into court for treatment he is adjudicated a delinquent, we are talking about now classifying this person as ROPE. I myself know of a youngster who used to have to break into box cars in order to sleep because his father used to try to shoot him. Is that person a criminal? I think we have to be cautious about this.

MR. ALEXANDER J. PALENSCAR: I do not know if anyone has addressed this except to say that these are bizarre situations. I am sure they exist. . . .

QUESTION: They are just as bizarre and exist just as much as that repeat offender, because, as I have heard all day today, we are only talking about twenty-five to seventy-five to 150 people, and I know there are equally that many people who fall into the same category that I have just brought up.

MR. ALEXANDER J. PALENSCAR: I can tell you, though, from the thousands of kids that we have had in our Habitual Offenders Unit, I do not think I have had one case that matches the scenario you have just described. You know, in prosecuting you use, or should use, some judgment. I will give you a crazy example. I just had an adult quadriplegic who was just charged, strangely enough, with malicious destruction. His wheelchair scratched a car. He did not show up and they issued a bench warrant for him. When I learned about this, I almost went bananas. I said to my prosecutors: "If you do not dismiss this, you had better have a pretty good reason why you did not." So we get into some bizarre things. But, hopefully, the judgment of the prosecutors is going to prevail and you are going to stop these bizarre situations from getting as far as your case indicates.

QUESTION: It seems there is some inconsistency in our probation agency about how the records are kept, how long they are kept, what records are kept. Is there any statutory requirement in this respect?

MS. NATALIE H. REES: The answer is, I do not know. The statute speaks only of juvenile court records and police records. The debate you would have to get into is whether or not the Juvenile Services Administration record is a juvenile court record or not. It is a real impossible question to answer off the cuff. In my opinion, they are not juvenile court records, but that is in keeping with my philosophy. I think you can make an argument for the other side that they are. The same thing for the prosecutor's records. They do not come under the statute. He can share his records with anybody.

QUESTION: Again, the problem is, how do you define "records?"

MS. NATALIE H. REES: The problem that you are raising is what concerns me about proposals to link up MAJIS and CJIS, to try to link up the criminal computer system with the juvenile system. They do not match up. The language in juvenile court does not match the language in criminal court: The record-keeping system does not match up. None of it matches up. The juvenile court is not like criminal court. What Al says is true at the adjudicatory hearing

is not true at the disposition hearing. Juvenile Services Administration does not even keep, necessarily, the disposition. You might have the initial charge, but that is all.

QUESTION: What about school records, social histories, psychological records?

MS. NATALIE H. REES: That all works its way into PSIs (pre-sentence investigation reports). I have a lot of problems with that, because the juvenile who saw the court psychiatrist in conjunction with a disposition for an offense at age twelve or thirteen, is now convicted in criminal court ten years later, and it shows up in his pre-sentence investigation report? I have a lot of problems with that. Unless you are going to put some kind of requirement on the time limitations for this to begin with, I do not think those records should be made available.

HONORABLE JOSEPH E. OWENS: A couple of things come into it. As Professor Rees said earlier, at one time we could expunge them. Many records were expunged. They are gone. Now the law says that records can be sealed, but it also says they can be opened by show of good cause, which is the same situation as before they are sealed. So it really does not matter that much. I think there is something that covers records of Juvenile Services in the general statute elsewhere, but I do not know what it is.

MS. NATALIE H. REES: It is in the Code of the Maryland Administrative Regulations (COMAR) but not in the juvenile code.

MS. CATHERINE H. CONLY: This brings one thing to my mind. For the past year, Natalie and Al have been working with me to understand better what the quality of juvenile records is in this state. We found that there is a lot of variation across the subdivisions in this state in terms of the records we keep and the records that are shown other people. Sometimes those records are shown to people who are not specified in the statute as having access to records. So there seems to be a bit of confusion about what the law says. There may even be policies set in each one of the subdivisions that, perhaps, are at least in opposition, at times, to the law. It is interesting that what you are talking about is, I think, what Charles Wellford found in Anne Arundel County when he went in to get information about juvenile repeat offenders. Essentially, he found that, at the first arrest, the social history information was frequently missing. When a person was arrested a second or third or fourth time, the social history information caught up with that person. Now, it may be just that it is the policy in that subdivision to give that person a break. I do not know that for sure, and I am not sure that Charles knows. But it is interesting that, as a person became a chronic juvenile offender, the social history information finally caught up. It is a fascinating problem because it shows a variation across the subdivisions and within different agencies. It is an enormous problem with respect to the issue of data quality.

QUESTION: I would like to make a contribution to the question of how long you should keep records. I suggest that a century is a good round figure, and a very useful period of time. It throws in another dimension which would

be very easy for you to overlook here. Having been involved in a lot of historical research in the last few years, I can assure you that these records can have a lot of value. To throw them away in just a few years would be really quite unfortunate.

People are getting more and more interested in their genealogies these days; it is astonishing how often people are searching for records of this kind. I have had requests such as: "I am trying to find out something about my grandfather, who was in such-and-such a prison. Are those prison records still there and would they tell me something about him?"

People are also looking for criminal justice research opportunities. These records are very, very valuable and you might want to compare what delinquents looked like now as compared with a century from now.

Microfilming today is feasible enough so that these records should be preserved for reasons like this for a very long time.

MR. ALEXANDER J. PALENSCAR: We have the state of the art but we do not have the funds. Every agency is fighting for its life for money.

MS. NATALIE H. REES: The records do not get destroyed. I was referring to how far back in time you should have access to those records for future use, but they are not destroyed. Even when they were supposed to be expunged in Baltimore City, we did not destroy them. They are in cardboard boxes, in fact.

QUESTION: The state's attorneys' office has access to social files. They cannot use them as evidence for adjudication but the state's attorneys can read them and use them to their advantage, maybe not as evidence against the kid, but in trial strategy, in plea bargaining efforts, as well as in questioning during the trial. So that information does end up being used against the kid. My concern is, how can the state's attorney, at any adult hearing, use this information intelligently when some of it is inferences, or some of it is statements by families who may think they are helping their child (they want some services from the state) but it is inaccurate? You are going to turn this around on them for an offense as an adult? You cannot intelligently use this information.

MR. ALEXANDER J. PALENSCAR: I have never seen a social study used except to benefit the individual. For example, after reading the social study, we may decide that this is a case we do not want to prosecute. This may be a case where we might normally have asked for commitment, but, having read the report, we are not going to, or it is a case where we might normally have asked for waiver, but we are not going to. There is no admissible evidence, because it is all hearsay, that is, what somebody said to somebody else. It is not admissible in any way.

From my personal experience, we have never used any social report against the respondent. It always tells you some negative things about him, that he has got a behavioral disorder, or he has a disadvantaged family that has no money so there is no point in asking for restitution--things of that nature. It would never be admitted in the bail process. In the bail process, it is

merely that he was found delinquent of burglary; it has nothing to do with the family history of this person. Now, whether or not he pled to burglary in order to get social services, I cannot answer that except to tell you there are very few defense counsels who will plead a client to burglary--although maybe it is technically feasible and even ethically possible--just to get him treatment. If you pled him guilty to anything, it would be to rogue and vagabond or some very lesser type of offense.

PANEL D
THE TREATMENT OF JUVENILE REPEAT OFFENDERS

MR. FRANK A. HALL: As Secretary of Public Safety and Correctional Services for the state of Maryland, I have a particular interest in this topic today, having the responsibility (the Division of Correction being a part of the Department) for about 105 offenders (on any one day) who happen to be juveniles with respect to age, but have been treated by the courts as adults. They have either been waived up to the adult system, or they were charged initially in the adult criminal court. In the last four years before coming to Maryland, I also had the experience of being responsible for the juvenile justice system in the state of New York. I have served as Director of the New York State Division for Youth, which has responsibility for all juvenile offenders in New York, as well as for the prevention programs in the community. So I have a particular interest in the topic which is the focus of this particular panel this afternoon.

Today's panel is entitled "The Treatment of Juvenile Repeat Offenders." The purpose of the panel is to identify the issues and possible solutions in treating juvenile repeat offenders. Specifically, the panel has been asked to address such issues as the rate at which juvenile repeat offenders become adult offenders; the efficacy of the current juvenile justice system sanctions against juvenile repeat offenders; the utility of the waiver to adult criminal court; the utility of other alternatives (for example, youthful offender institutions), and so forth.

We have three very distinguished panelists, two of whom I have had some previous experience with. Donna Hamparian is now Co-Director of the Ohio Serious Juvenile Offender Project, Federation for Community Planning. I had the pleasure of introducing her at a panel on juvenile justice in the city of New Orleans in the last year or so. I have also worked with Judge Silver over the last few weeks as we attempt to develop some sort of treatment alternative for juveniles in the state of Maryland. Judge Silver is a former legislator and therefore is familiar with the legislative process in Maryland. He has faced a lot of the frustrations that all of us face in trying to find some viable mechanisms for dealing with the serious juvenile offenders.

I would like to introduce each one of the panelists and give you some brief background information. The panelists will take ten to fifteen minutes to make their presentations. Then, at the end of the presentations, we will have an opportunity for some questions and, hopefully, some answers. Helping me today is Jesse Williams, who is the Deputy Director of the Juvenile Services Administration for the state of Maryland, and is serving as our technical assistant for this particular panel. He will also assist us in formulating a summary of the panel at the end of today's program.

Let me begin with Judge Silver. I have indicated I had a chance to meet Judge Silver shortly after coming to Maryland, as we began to work with various legislative committees which are trying to find a solution to the problem of finding adequate resources for the serious juvenile offender.

Judge Silver was born in 1923 in Baltimore City. He is a graduate of Baltimore City College and of the University of Baltimore Law School. He was elected to the Maryland legislature in 1954, served as a member of the Judiciary Committee, and was chairman of the Committee on Motor Vehicles from 1955 to 1965. He was appointed to the Municipal Court of Baltimore City in 1965, appointed to the Maryland District Court in 1971, and appointed to the Circuit Court of Baltimore in August of 1977. He served as a juvenile judge for the City of Baltimore from February of 1981 to January of 1982. He has also served as chairman of the Maryland Judicial Conference Committee on Juvenile and Family Law, a post he has served since 1982. Judge Silver is going to speak to the issues as seen from a judge's perspective, particularly the current juvenile justice system's sanctions against juvenile repeat offenders, the utility of the waiver system, and the frustrations that all judges, and all of us, face due to the lack of viable options.

JUDGE EDGAR P. SILVER: Thank you, Secretary Hall. I want you to know, ladies and gentlemen, that Secretary Hall came down here approximately two or three months ago and he really walked into something in the state of Maryland. I do not have to tell you what it is like to have jurisdiction over our penal system with what is going on. We just do not have enough facilities in the adult system, much less in the juvenile system, as to where we are going to house those individuals who are involved in such "heavy" antisocial activities as it takes to earn a period of incarceration.

As a judge in Baltimore City, I want to tell you that we have a real problem with the state as far as the city is concerned. And when I say "a real problem," I mean that even though the city might be a nice place to live in, we have most of the poor (judging from the cities in the area of the city), most of the so-called "heavy" crime in the state, and obviously most of the so-called hardcore, youthful offenders.

The issue is, what are we going to do with these youngsters who are involved in constant antisocial activity, constant delinquent activity, and eventually find their way into the adult system? When I sat as a judge, I was very idealistic, and sometimes very frustrated, but I still have not lost faith and hope in the fact that we cannot abandon the juvenile system and, as many people are saying, build a maximum security prison and put these children away, as long away and far away as possible, just to keep them away from the community. There is a very difficult problem facing the judiciary, and when I say the judiciary, I include those masters who have jurisdiction over juvenile activity. In Baltimore City, we have seven masters, all of whom sit in judgment on a youngster and they must weigh the alternatives of the various programs that we have.

I would like to speak to you specifically about the Baltimore City problem. We represent roughly fifty percent of all the antisocial activity taking place in the state of Maryland. Just to cite some statistics (and I know you hear this all the time), I can at least provide you with the January to September Index arrests for Baltimore City alone. The national average for murders is 8.5 percent for youngsters under age eighteen; in Baltimore City, the percentage is 11.5. For the crime of rape, the national average is 14.7 percent for those under eighteen; in Baltimore City, 21.9.

For robbery, the national average is 26.4 percent; in Baltimore City, 38.5 percent. For aggravated assault, the national average is 13.2; it is twenty-five percent in Baltimore City. We have a very difficult situation because of the mixture of handguns and drugs; we are dealing with a very explosive situation. It is that type of child that really is the challenge for the judiciary.

I am not talking about the youngster who gets involved in a misdemeanor and is probably placed on probation and whom we never see again. The system is really working for that child, and that is why I say we should never take our eyes off what the juvenile system is generally all about. I am not talking about the youngster who may have to be institutionalized at one of our training schools--Montrose School, the Maryland Training School--or at one of our youth center camps which we call the forestry camps. Our local institutions are very, very fine juvenile institutions. They have proven themselves time and time again, to the point where the Maryland legislature this last session passed the funding for the building of three new forestry camps that will have several hundred new beds. This will be one more alternative for the judge and the master when they are looking at that type of youngster who does not need a really secure environment and/or long-term treatment and rehabilitation.

When I talk about long-term treatment and rehabilitation, I am talking about the youngster under the age of eighteen who is involved in murder, arson, rape, or armed robbery. Those are the type of felonies that get them into the adult system by virtue of our laws today. Now, we also have the type of youngster who, by the repetitive nature of his antisocial activity, has been to our training schools or has been placed on delinquent status several times. (In Baltimore City, they have an Habitual Offenders Unit which has been very successful in earmarking that type of child.) That type of child usually is ready for the waiver system, meaning he is to be sent up into the adult system. There is a lot of frustration right there for the juvenile judge. He is not sure, but he waives this child and takes him out of the juvenile system if he really wants to help that person. And that is the frustration.

Now recently, our committee--the Judicial Conference Committee on Juvenile and Family Law--has been dealing with Senator Miller's Committee on Juvenile Facilities for Maryland. We have decided we can no longer just talk about this issue; something has got to be done. We are in a very difficult financial situation here in the state of Maryland. We cannot talk in terms of a $30 to $40 million project without having great impact on the general budget.

But in our state today there is an institution called Patuxent. Patuxent's concept, originally, was to handle "defective delinquents." I was a member of the legislature when we dealt with that. It became a frustrating problem, because it had open-ended sentencing: to some degree, you never knew when you could get out. "Defective delinquents" were finally sort of eased out by way of statute. And now, for all intents and purposes, the way I see Patuxent being handled is as just another part of the Division of Correction. It is an institution for the housing of those individuals

involved in "heavy" crime. Of course, they get the psychological help and training at the Patuxent Institution that you may not get at the average penal institution.

I have decided, my committee has agreed, and we have been dealing with the Miller Committee which is going to move very shortly on this issue, that a section of the Patuxent Institution can be used for that hardcore, repetitive youthful offender who needs long-term security, long-term treatment, and long-term education. There is no better institution anywhere in the state of Maryland today that I can think of which has the proper facilities. It has all the medical, psychological, and educational help. It is also a very secure institution--we took a tour of it several weeks ago--believe me, it is a very secure institution. We believe that we can help these youngsters--we are talking about maybe just several hundred youngsters, a little over a 100 a year, maybe 150 a year--who constitute a real threat to a system that does not know how to deal with them.

We feel that that type of youngster would be fit for a Patuxent commitment where, under the guidance of Doctor Gluckstern, Patuxent could develop new types of programs. It may take five, six, seven, eight years, we do not know, but at least we will have a psychological workup on that youngster. We will have him assigned to psychological evaluation; he can get his GED there if it is necessary; he can take Maryland vocational training. All these things are necessary to try to identify, isolate, and get a profile, once and for all, on that type of youngster who is the real core of our problem. To just turn him into a penal institution and bring him back onto the streets has been a complete failure. And I venture to say that the taxpayers of this state are more concerned about this type of individual than with how to deal with the misdemeanor violator, who maybe breaks someone's window one day or maybe gets involved in a shoplifting case one day, who is not really a true threat to our communities.

So, I believe that I am not talking about any new concept for the state of Maryland. Juvenile Services must be given an increase in facilities, and I do believe that we should have fought more for something similar to what we have in Baltimore City called the Arthur Murphy Home, where a child can be sent. It is literally a group home type of concept, but these youngsters live at home, go and attend institutions where they get training, both academically and vocationally, but return home each day. We should have more of that type also. These are for the youngsters who stay in the juvenile system.

I hope I have made it clear to you that I am highlighting a situation that is paramount in my mind these days: what to do with the hardcore youthful offender. With the cooperation of Frank Hall--I am extremely impressed with his grasp of this whole situation--and the people at Patuxent, Dr. Gluckstern and her staff, the judiciary, the masters and juvenile judges, I believe there will come a time when we will be able to see the youngsters in front of us and know that, if he is this type of youngster, he should be fit for this type of programming. Once and for all, we will have a handle on how to treat this youngster--we are talking about fifteen, sixteen, seventeen years old, that is a youngster--before that youngster goes completely

out of the system and becomes a real criminal who comes back out on the streets and is really involved in some "heavy stuff." I believe we can, once and for all, isolate and get a profile of that youngster. If we save a dozen a year, it would be better than what we are doing now. And that is the message I would like to leave with you.

MR. FRANK A. HALL: The judge is noted for his directness. Thank you very much, your honor. To try to give us a national perspective, our next panelist will detail some of the trends in handling violent juvenile offenders and talk a little bit about the waiver issue and some of the treatment alternatives. Donna Hamparian, as I mentioned earlier in the program, is Co-Director of the Ohio Serious Juvenile Offender Project. She served as principal investigator for the national "youth in adult courts" study, and as consultant on numerous juvenile delinquency and juvenile justice issues throughout the country. She is the author of reports and numerous articles on dangerous and violent juvenile offenders. From my previous experience with her, having worked with her in several other panel situations, I am happy to report that I think Donna has a pretty good understanding of what is going on in this particular area, not only in the state of Maryland but also in the country.

MS. DONNA HAMPARIAN: Thank you. It is a very hard act to follow behind a judge who has a very strong idea of what he wants to see happen in the state of Maryland. I would like to ask a couple of questions and maybe later, if there is time, the judge will answer them. First of all, it is my understanding that the defective delinquent statute in the state of Maryland is an adult statute and was never really meant to be addressed to people under eighteen, except those referred to criminal court. Is it correct to assume that the juveniles sent to Patuxent would be sent under the existing waiver or excluded offense provisions after trial as adults? Secondly, what do we know about the programs and outcomes at Patuxent that would lead us to believe that Patuxent is the answer to juvenile offenders in Maryland? As I have read the reports on Patuxent over the years, it does not appear that Patuxent has such a high success rate with young adult offenders. Is the psychiatric/medical model the appropriate one for repeat serious or violent juvenile offenders?

It distresses me when we in the juvenile justice system are so bereft of ideas for what we can do with juveniles within our care, that the only answer we can think of is to incapacitate them in adult facilities for very, very long periods of time, when what they need are services to make it possible for them to return to the community and be productive members of society. Incapacitation of a fourteen or fifteen or sixteen year old for ten or twenty years is not going to assure that that person is going to become a productive member of society. Maybe we have failed. Maybe the juvenile justice system should be dismantled. But I think we should at least try some things within the system, test them, and see whether they work. If they do not work, let us try something else. But to throw the baby out with the bathwater because we have run out of ideas, I think, is something we can not afford to do in this society.

Now, I know that that is not why I am here today, and I apologize for

going in a different direction, but I have heard a lot about punishment today. I have heard that putting kids in training schools is not punishment, that taking them out of their homes for long periods of time is not punishment. What do we want to do with these kids? Do we want to start cutting off fingers or something else to assure that we can say we have punished them sufficiently?

Now, back to trying juveniles as adults. What I am going to talk about today is the question: Is the answer to the chronic or repeat serious juvenile offender to be found in the criminal justice system? As I understand this, we are talking about a broader category of juveniles than the violent offender. We are talking about quite a different category of youth, the ones who are in the system over and over again. The data on the chronic juvenile offender that Wolfgang has compiled and that we collected for the Violent Few study would indicate that a certain percentage of the chronic offenders who have been in the juvenile justice system have never been arrested, brought to court, or adjudicated for a violent offense. Many of them commit lots of offenses, and are in court over and over and over again, but they are there for property offenses, public order, drug offenses, and other less serious violations, but have never committed an offense against a person. I just wanted to mention this, because when we are talking about the repeat offender, we are not talking necessarily about a repeat offender who is a violent offender. They are very, very different in their offense patterns, as I am sure all of you know.

During the past ten years, fifty percent of the states in the United States have passed legislation making it easier to transfer juveniles to criminal court. It has been the result of a meeting of the minds among the legislatures, the news media, the juvenile justice system, the prosecutors, that the juvenile justice system has been unable to fulfill its mission. The changes have been varied. They affect children as young as thirteen in New York. They deal with as many as all felony offenses at a certain age, and in some cases they are limited just to capital offenses at an age as young as ten in Indiana. So, the changes are imaginative, non-standardized, and very complex in many of the jurisdictions.

There are four ways that juveniles can be transferred to criminal court in this country. The most common is judicial waiver and, of course, Maryland has a judicial waiver statute. All states except three have judicial waiver provisions by which a juvenile court judge determines that a juvenile is not amenable to treatment as a juvenile, or that the public safety requires that that juvenile be transferred to criminal court. The three states without judicial waivers are, interestingly enough, Arkansas, Nebraska, and New York. (We will come back to New York because New York has passed the most controversial piece of legislation in juvenile justice in the last ten years.)

Second, the legislature, by excluding certain categories of offenses from juvenile court jurisdiction, automatically refers certain juveniles, arrested for those offenses, to criminal court. In 1981, thirteen states legislatively excluded some serious offenses at specified ages. In the past five years, New York, Vermont, Oklahoma, Indiana, New Jersey, Illinois,

and Idaho have added excluded offenses. The offenses that are covered under these excluded offense provisions range from capital crimes in many states to a shopping list of offenses in New York that starts with aggravated murder and goes all the way through to burglary. Most jurisdictions in the country have considered excluded offense provisions in the past ten years. It is considered because it is a simple, uncomplicated approach: if a juvenile is a certain age, arrested for a specified offense, automatic referral to criminal court occurs.

There is no consideration of previous record. There is no consideration of the other characteristics of that juvenile. For all specified offenses, the youth is treated as an adult; detained as an adult; tried as an adult; if incarcerated, generally incarcerated as an adult. There are some exceptions to this. For example, in New York, the statute mandates the incarceration of juveniles under sixteen years of age only in a juvenile facility until he is sixteen and permits continued placement in a juvenile facility until age eighteen, or twenty-one, depending on the other factors involved. But generally, these youth are treated as adults.

Third, statutes providing for some type of concurrent jurisdiction exist within the codes of eighteen states. In most of the southeast states, only fish and game and other minor misdemeanors are covered, but in eight jurisdictions, concurrent jurisdiction exists over specified serious offenses. In Nebraska, Arkansas, and Wyoming, concurrent jurisdiction allows the prosecutor to decide the forum for all offenses at specified ages. So in those states, it is up to the prosecutor whether the juvenile will be determined to be a juvenile or an adult for all offenses at specified ages. Florida added a direct file provision to its juvenile code a couple of years ago. It is probably the most controversial piece of concurrent jurisdiction legislation. It has been used very frequently. In Dade County alone, about ninety juveniles a month are direct filed, which means they are charged in criminal court and if they are found guilty in criminal court, they generally are given adult sentences.

Fourth, the legislature, by setting the maximum age of initial criminal court jurisdiction below eighteen--either at seventeen or sixteen--defines the juveniles above that age--seventeen or sixteen year olds--as adults for all offenses. These cover not only serious offenses, but also misdemeanors and minor misdemeanors, heard by municipal courts. In the twelve states that have this kind of legislation, a juvenile, a sixteen or seventeen year old, is an adult for any criminal charge. The youth can be detained in a jail; tried as an adult; and, if incarcerated, is incarcerated in either an adult jail or a prison. There are no exemptions to that in the twelve states which have this kind of provision. There are some states within the twelve that have what are called "youthful offender" provisions. New York, again, is one of these states. In New York, a sixteen or seventeen year old convicted in criminal court may receive "youthful offender" status, which means an attenuated sentence, usually a probation sentence, as opposed to an incarcerative sentence. Several other states have this kind of provision, including states with other types of transfer mechanisms.

In most states, juveniles tried in adult court who are given an

incarcerative sentence are placed in adult correctional facilities. The number of people under eighteen in adult prisons has risen dramatically in the last few years. In a few states, youth can be placed in a juvenile facility until reaching the age of majority, and then transferred to an adult facility if there is still time left on the sentence. In a few states, the criminal court can place that juvenile tried as an adult either in a juvenile or adult dispositional option. There are just a few states with this type of provision. However, it is becoming more common.

I would like to mention just a couple of pieces of the data from a national study that we did on juveniles tried as adults. (I think you probably all have heard enough data today to last a very long time.) Over a quarter of a million juveniles, under eighteen years of age, were arrested and referred to criminal court because of the lower age of initial criminal court jurisdiction in 1978. No other kind of referral mechanism even comes close to the use of the lower age of jurisdiction to bring juveniles into criminal court. Just over 9,000 juveniles were judicially waived to criminal court in 1978. This number represents less than two percent of the juvenile court caseload in most juvenile courts. Maryland has a fairly high waiver rate, despite the fact that Maryland also has an excluded offense provision. I think Maryland was eighth in the country in the rate of judicial waiver in 1978.

One of the most interesting findings in the legal research we did, and Dr. Ohlin mentioned it this morning, is that no states have lowered the age of initial criminal court jurisdiction in the past ten years. Several states considered it, but interestingly enough, eight states within the last fifteen years have increased the initial age of criminal court jurisdiction and no state has lowered it. They have lowered the age for specific offenses, but not for initial criminal court jurisdiction.

Studies have shown that age and previous court record, which ties in with the repeat offender issue, are the two most important factors in determining judicial waiver, more important than the seriousness of the instant offense. I think it is also interesting that most juveniles tried in criminal court after being judicially waived are seventeen years of age or older at the time of the actual transfer. However, eight percent were fifteen years of age or younger. My question on that eight percent is: What in the world can the criminal justice system do with juveniles fifteen years old and younger?

Almost all the juveniles waived were males. Almost all the juveniles judicially waived were convicted in criminal court. Those youth convicted in criminal court were more likely to receive probation or some other community sentence than either a jail term or a juvenile or adult corrections term. The sentencing for most juveniles waived is probably about the same or less than if they had been tried and adjudicated delinquent in juvenile court. However, twenty-three youths were sentenced to life terms and thirteen percent received maximum sentences of over ten years.

We found there were at least four reasons for the use of referral of juveniles to criminal court, including: to remove chronic offenders who had

exhausted the resources of the juvenile justice system; to remove the juveniles who commit the very serious, violent crimes that receive a lot of media and community pressure; to remove minor offenders where the perceived appropriate penalty is a fine or a short jail sentence not available in the juvenile court; and to remove minor offenses to reduce pressure on juvenile court dockets.

Too frequently, the perception was that if a juvenile were transferred, a longer sentence in the criminal court than in the juvenile justice system would be the result. But there is another large category of juveniles who are transferred to criminal court to obtain less severe penalties. In many states, a juvenile can request trial as an adult, and if the defender believes that the juvenile will receive a lesser sentence in criminal court, trial in adult court will be requested.

At the same time that this legislative activity has occurred, making it easier to refer juveniles to the criminal justice system, the juvenile justice system has been making changes within itself. Changes include determinate sentencing, such as in Washington state, where a point system determines whether a juvenile will recieve a training school sentence, or may be diverted from the juvenile system.

There is also minimum sentencing. In Ohio, juveniles adjudicated delinquent for a felony and committed to a training school must serve a minimum sentence of six months for a felony three or four and one year for a felony one or two. There is no option on the part of the juvenile corrections agency to reduce the sentence. The judge can reduce it, but the corrections system has no power over the minimum length of time the juvenile must remain.

A couple of states have added mandatory sentencing. Illinois, for example, in its Habitual Juvenile Offender Act, requires that a juvenile who has been adjudicated twice for a serious felony and is back the third time must stay within the juvenile corrections system until reaching twenty-one years of age, with time off for good behavior. (The option of trial by jury is also required.) In addition, juvenile corrections agencies are developing sentencing guidelines to assure a relationship between seriousness of the offense and previous record, and the length of time served.

There are some policy issues I would just like to go through very quickly. One, if you are going to make a legislative change in Maryland, either within the juvenile justice system or within the criminal justice system, decide what you want to accomplish and then build the objectives to accomplish that goal. Do not do it because a youth commits a murder or some other kind of political pressure is applied for legislative change.

Second, the mechanism to deal with chronic offenders may be very, very different than the mechanism that needs to be put in place to deal with violent offenders, both programmatically and legislatively. Does youthful offender legislation make sense for Maryland? Is the three-tier approach the best approach for problems you face within Maryland? In most states, you have one major city that has most of the violent crime, most of the serious, chronic crime. Do you pass legislation that changes the whole juvenile

justice system to deal with the problems of one community, or are there other ways to deal with it?

Third, the use of juvenile court records in criminal court processing is one which should be viewed with a great deal of caution. In many states, the legal protections within juvenile courts are not the same as the legal protections within criminal courts. If the records are used as if they were convictions and they are treated that way in dispositions within criminal court, then abuses can occur.

Fourth, what are the administrative and programmatic issues that come up when you put juveniles who have been tried as adults in the adult corrections system, and what problems arise if you put juveniles tried as adults in with juvenile delinquents in juvenile facilities? These are very, very serious administrative issues and problems created for either the adult or juvenile corrections agencies. There are materials written on this that I urge you to look at before you make any changes in that direction.

Fifth, when we talk about programming for serious juvenile offenders, we seldom put a high enough priority on after-care. All the studies indicate that what happens to a youth after he gets out of a treatment program is at least as important as what happens within that program. Yet we never give the after-care component--hopefully, a continuum of care--the kind of priority it deserves. I urge you to think about that when you are talking about programs for violent or chronic offenders.

And lastly, what do all these changes mean for the future of the juvenile justice system in this country? If we take out the status offenders and the minor offenders from the juvenile justice system and channel them into another system; and if we take out the serious offenders and the chronic offenders who are deep in the system; can we any longer justify a separate system for juveniles in this country?

MR. FRANK A. HALL: Thank you very much, Donna.

At lunch today, there was a question asked of the Director of the Office of Juvenile Justice and Delinquency Prevention as to whether his agency planned to spend any money on research about what works, since they have apparently spent a considerable amount of money telling us what does not work. Well, Tom James is the Executive Director of New Pride, Inc., located in Denver. He is here today to tell us about a program that apparently is working. It is a program that has been replicated in ten other cities in the United States for which he has provided consulting services. He works exclusively with repeat offenders, and has also set up a construction company as part of this new program in Denver. He is a graduate of Loretta Heights College, University of Colorado.

I almost did not want to tell this story, but I decided I would have to. Somebody was trying to reach him at his office about a month ago, just to make some final arrangements for his being here, and his office said: "No, he is not here, he is on his way to Baltimore for a Conference." Well, I think they caught him in Chicago or somewhere and got him back to Denver.

But we are very glad he could be with us this afternoon.

[Due to technical difficulties, Mr. James's remarks were not picked up by the recording equipment at the Conference.]

MR. JESSE E. WILLIAMS, JR.: We have had quite a lot of information shared today from a number of different perspectives. I guess all sides of virtually every issue have been presented. My role is to try to summarize all that and also to raise questions.

In terms of what is going on in Maryland, I would submit to you that, along the lines of what Allen Breed had to say, the future is now. A number of things that he described in a futuristic view of what may happen down the road are, in fact, things which are happening now. In terms of the greater use of the private sector, there are some efforts in process right now in the private sector, as well as in other agencies, to try to do something about appropriate cost-reimbursement for young people going into placement around the state of Maryland. Judge Silver has already raised the point of the potential use of Patuxent Institution as an alternative for some violent juvenile offenders and I think that relates directly to the kind of thing that Allen Breed described as a three-tier system. Although it is not exclusively judicial in nature, it does, in fact, look toward differentiating some kind of treatment for a segment of that population.

Without spending a lot of time talking about a number of services and programs which have been underway over a period of time and those which hold some promise of developing in the future, I would like to pose to the panel members the following question, which was generated, at least in part, by comments made this morning. Dr. Wolfgang shared with the group assembled this morning the fact that a number of the young people who find themselves adjudicated for violent, serious offenses are minority youth. Most of them do come from economically disadvantaged and/or underprivileged, perhaps under-served, kinds of communities. To tag onto that, the Children's Defense Fund some years ago published a document called Portrait of Inequality, in which the fact was documented that in a number of these kinds of communities that are socially under-served and had less access to health services, educational services, and social services, these young people are five times more likely to be incarcerated. The question, then, is: Given this kind of perspective and given those kinds of realities, what role, if any, do juvenile justice professionals and service providers in the field have in terms of a responsibility for addressing these inequities as comprehensive overall solutions for the question of violent, serious offenders and perhaps of juvenile delinquency in general?

JUDGE EDGAR P. SILVER: This is a problem that national leaders have been turning their backs on for a good many years, and the present administration is even more difficult, with its turning off of many, many, many programs. I really believe there is very little that the judiciary can do except to deal with everyone on a fair and just basis. The problem is, you are talking about an injection, in my opinion, of a lot of funds into many, many urban areas all around this country. I agree, this is a cancer that is spreading all the time and nobody is paying any attention to it. We cannot

develop a vaccine, like we have done for children who get measles or polio. I know it is a tragedy, but I do not have the answer to it.

I can only tell you that when I sat in judgment and as I sit in judgment today in the adult system, I understand where they are coming from--I am sitting in an urban area--and my heart goes out to the problem. The fact remains that there are victims of crime and we must deal with the problem of what to do with this defendant or this child in front of me.

In answering your question, I also want to answer Donna's question about Patuxent. It is not our purpose to mix these youngsters in with the general prison population. Patuxent was set up to deal on a psychological basis. When we talk about a fifteen year old, we are talking about a fifteen year old who, in many instances, is six feet tall, who is very strong, who has the ability to get his hands on a handgun, who has the ability to blow you away just as sure as look at you. These are very tragic situations. These are very dangerous young people who must be put in a secure environment.

We in Maryland have gone a long way. I am proud of our juvenile system in Maryland, but I am also proud of the fact that we recognize there is a type of youngster who is causing a lot of tragic situations in our communities. We must deal with them the best we can, and with the best economic facilities that we have, too. (You can only get so many tax dollars out of the legislature.) Dr. Gluckstern is going to set aside a separate facility within Patuxent and run a pilot program for about a year or two to see what to do with this type of child. Is there nothing that can be done, or can we help this child? We cannot do anything until we go into the lab and try to deal with them.

This will be a pilot program. It will be like a human laboratory for hardcore, youthful offenders. It has got to be done, because the doctors cannot give us a vaccine. And Jesse, I am sorry, but I do not have the answer to all these problems. If we would only recognize where to put the tax dollars. If I were President of this country, I would know where to put the tax dollars.

QUESTION: I would just like to ask Judge Silver's opinion. Assuming that you are talking about 200 to 300 beds in Patuxent, which is one-third of the present population at the Maryland Training School, what is wrong with a new innovative concept for sixteen to twenty-five year olds? I am referring to the drill-master-type situation, where the military takes a role and breaks down certain acts and regenerates somebody into a disciplined individual. What is your opinion?

JUDGE EDGAR P. SILVER: First of all, the speaker is a man who is a deep thinker and more than that, he is a probation officer in the juvenile system. I met him when I was in juvenile court. He comes from a different mold, gets very deep and very philosophical. The fact is, we have to be very pragmatic today. Down the road, I am hoping that this pilot program--the psychologists, the juvenile authorities involved, the educators--will come up with a profile of that type of youngster and tell the legislature and the judges that when they have this type of child in front of them that

he should go into this type of situation. We have not done a thing in Maryland to deal with this type of child; this will be the first time. I am hoping we will get off the ground now. But, you are a great dreamer. We cannot dream today. We must be very pragmatic. We will get to dreams after we solve the first things.

QUESTION: Mr. James, I was associated with a program that sort of stole some of your ideas and I have read something about the program. My question is: How long are kids in your program there, on the average? I will tell you why I ask the question.

MR. TOM JAMES: The average stay is about a year.

QUESTION: The reason I ask the question is because a lot of people, I think, feel that the institutions we have currently do not prolong the kids' stay for a long enough period of time to have any impact, which I am sure you would agree with. I think the average stay at the Maryland Training School for Boys is about six months, and some of us have the feeling that for that institution or any other institution to really have an impact, as you put it, on the kids, they really need to be there longer, which has to do with overcrowding and so on.

QUESTION: I am worried about Patuxent. In our desperation and frustration and overcrowding, are we going to so complicate our system that we will end with a system which substitutes the adult for the juvenile system? I would like to make a few observations and should like to pose some questions.

One, I understand that Patuxent is primarily an adult institution. If you place children there, I would wonder whether it is advisable to have the children so close to the adults. There was a time when this concept was not desirable.

Two, with the already overcrowded adult system, are we going to jam in some more juveniles? We already have adult males who are waiting for admission. And we have women who are vying for equal treatment by admissions at Patuxent. Are we now going to complicate matters still more by putting in juveniles?

And I also thought that one condition of Patuxent was that it be freely chosen. How are we going to get around that? It is primarily a research institution, and we know in the past we have had research on marijuana and even spinal meningitis. Now, how about free consent? Are we going to ask the juveniles, the same as we have in the past asked adults, to submit to experimentation?

There is no proof that I know of, and I would have real interest in seeing the statistical evidence of the accountability and the success of Patuxent. I am wondering whether we can even define recidivism. I have heard about their marvelous progress and I do think our present warden is very efficient, but I am wondering, is it really impossible to transfer those

services to a proper juvenile facility? Primarily, the treatment is psychiatric. Now, on that basis, would all juveniles be what we call "eligible persons?" And if they do not succeed, then what do you do, where would you place them? Do you place them in an adult, or back to a juvenile, facility?

I am just wondering, on the whole, whether we are moving from the punishment concept, which we seem to be endorsing by our actions if not our words, to a treatment concept. And then I wonder, I really do wonder, whether that is the way we want to go. I would welcome your comments.

MR. FRANK A. HALL: I think you have kind of put me on the spot. I do not know that Donna would be qualified to answer questions about Patuxent. Dr. Gluckstern is here today, the Director of the Institution. I am not going to try to answer all your questions here. I think I will have an opportunity to answer at a later time. But just let me say briefly what the "Patuxent proposal" is all about.

The whole Patuxent idea came about because of the frustration that Judge Silver expressed today, along with the frustration of a lot of the members of the legislature, about the inability to deal with these youngsters who somehow belong in the juvenile justice system but yet need a more secure environment than may be offered there. From the adult system perspective, our frustration is that we think the juvenile justice system should be able to take care of all offenders along the spectrum, from the youngsters who need to be in a community program to the youngsters who need to be in a secure facility. But obviously the courts and the Maryland state legislature have seen fit to pass laws to allow the waiver-up of certain juvenile offenders into the adult criminal justice system. Those youngsters--admittedly, we are talking about some very tough juveniles, we are not talking about lightweight offenders, for the most part--end up in the Division of Correction adult facilities which, as you have already pointed out, are overcrowded to the extent of being at about 150 percent of capacity. Those youngsters, no matter how tough-behaving in the juvenile system, become the victims in the adult criminal justice system and pose some very difficult problems when you are trying to manage adult correctional facilities.

The Patuxent proposal is very simple. Because it is a treatment institution, and because it really integrates security with a treatment program, Patuxent should set up a very small, pilot program that could deal with some of these hardcore, repeat offenders who have gotten themselves waived up into the adult system. We already have these kids. They are already in the system right now. They are labelled "adults," but they are fourteen years old--we have a fourteen year old in the adult corrections system. We have fifteen year olds, we have sixteen year olds, we have seventeen year olds. What we are arguing at this point is that we need some resources and specialized programs to deal with these people.

I would submit to this group or to any group that I do not think it is all hopeless. I think Martinson was misquoted today by the Director of the Office of Juvenile Justice and Delinquency Prevention, as to what works and what does not work. We do not know that rehabilitation does not work. There is no evidence that rehabilitation has not worked. I think we have learned

that there are intervention strategies that might affect even hardcore offenders, at least in some cases.

That is all that the proposal amounts to at this point. I do not think it eliminates the need for the juvenile justice system to provide a range of resources from the community programs to the secure programs.

MR. JESSE E. WILLIAMS, JR.: I would like to tag onto your comments, if I may, Frank, to add that the kinds of concerns you raised are really valid concerns for whatever kind of program would be implemented at Patuxent, or at any other site for that matter, in terms of the response to violent juvenile offenders. I think everybody who is involved in this consideration is extremely sensitive to those kinds of concerns. It was mentioned earlier that any kind of a response that the system makes to the violent juvenile offender should look down the road in terms of the results that you want to achieve and then back up and plan to get to that result--as opposed to doing some things and hoping that they achieve the results. In this particular instance, I think that kind of concern has been met. The result that is being sought is a state facility which is designated primarily for violent juvenile offenders, many of whom, as Frank has indicated, are already in the system. This is a way to achieve that result. The question remains as to how best to achieve that result in terms of the program you build in at the facility. So, the folks involved are very sensitive to that, including Senator Miller and his colleagues in the legislature, Secretary Hall, Dr. Gluckstern, Rex Smith, and many, many others involved.

CLOSING REMARKS:

THE NATIONAL SCENE

MR. R. THOMAS PARKER presented a summary of current year Congressional appropriations in the justice field and a synopsis of issues surrounding the reauthorization of the Juvenile Justice and Delinquency Prevention Act. The materials he distributed in connection with these topics are found in Appendix IV.

APPENDIX I

CHANGING DIRECTIONS IN JUVENILE JUSTICE*

Prepared for

Conference on Juvenile Repeat Offenders
University of Maryland, College Park
December 8, 1983

Prepared by

Wolfgang Pindur, National Field Manager
and
Donna K. Wells, Administrative Assistant

Juvenile Serious Habitual Offender/Drug Involved Program

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Juvenile crime has been the focus of a great deal of attention for at least a century. In recent years, public concern has been growing and juvenile crime has come under increasing scrutiny. Just what is juvenile crime and how is it different from other criminal activity?

In reality, juvenile crime is not a species of behavior restricted to a particular age group. It is not etiologically different from all other forms of crime. Rather, juvenile crime is the invention of the legislature in the 51 jurisdictions in the United States that create boundary ages between juvenile and adult courts.[1]

In his recent address to the National Advisory Committee, Alfred Regnery, Administrator of the Office of Juvenile Justice and Delinquency Prevention, stated that "the primary goals of OJJDP will be to protect society from crime, apprehend and punish criminals and seek ways to turn young people away from crime as a way of life . . . it is imperative to note that we are not a social service agency . . ." These statements reflect a significant change taking place within the criminal justice system at the federal level.

Juvenile Courts

When juvenile courts were first established in the United States in 1899, it was under the doctrine of parens patriae--hence juvenile court was not designed to be a criminal court, but rather a civil court in which children were viewed in a supportive and protective manner. The new courts were established on the belief that children could be steered away from criminal activity.[2] The major purpose was not to punish the child but rather to provide help and guidance--an individualized treatment of the child.[3] Thus, the offender assumed the greatest importance, not the offense. Under this concept of the system as a sort of social service for

children, "the procedures of the court have been intentionally non-adversarial, the terminology intentionally non-criminal, and its powers intentionally vast."[4]

The problem is that the juvenile court system hasn't worked. A number of authors have recognized the inherent conflict in the responsibilities of the court.[5] On the one hand, the juvenile courts are expected to protect and rehabilitate the nation's children, on the other hand, it is the traditional purpose of a court to preserve the social order.

Historically, ours has been a society which has adopted a benevolent attitude toward adolescent crime. For the most part these crimes are not serious, the adolescents do not develop into career criminals and many adults can remember their own adolescent actions which may not have been within the boundaries of the law. Thus, adolescent criminal behavior is tolerated because it is not violent and because "children are not mature enough to be responsible for their own actions."

But what happens to this permissive attitude when the crimes are serious and, rather than "outgrowing" it, the juvenile becomes a chronic offender? It is the apparent inability of the juvenile justice system to deal with these serious juvenile offenders that has produced the strongest criticism against present policy. "Public concern has focused on violent juvenile crime as a problem that stands out clearly, even if a solution does not."[6]

Popular opinion has been shifting from support of the concept of rehabilitation to active interest in the philosophy of responsibility for one's own actions and the consequences of those actions. The public has moved away from concern with the offender to concern with the victim, from the belief that courts are a social service agency to the belief that the

courts should protect society from these juveniles who are serious offenders.

The Prevalence of Serious Habitual Juvenile Crime

The rationale behind the juvenile justice system suggests that all juveniles can be effectively rehabilitated within the system. It is at this point that the system clashes with reality. Numerous studies indicate that a disproportionate amount of serious crime is committed by a very small number of juveniles in the community. These juveniles may repeatedly come into contact with the justice system.

In the adult criminal community such repeat offenders are targeted through career criminal programs. In fact, there is some question about whether such programs may target career criminals too late in their careers. Research indicates that this type of criminal usually begins his activity while still a juvenile. In fact, by the time a career criminal enters his twenties, his criminal activity has already begun to decline.[7]

Still, career criminal programs target only adults. Those serious repeat offenders who have not yet reached the magic age of adulthood, are still safe within the confines of the juvenile justice system. Shouldn't we begin to question the ability of the current system to deal with those kids? Is it wise to pretend they don't exist - to question their validity? As we sit here contemplating the legitimacy of labeling them, these juveniles are committing these crimes again and again.

The Effects of Serious, Habitual Juvenile Crime

Protection of the youth, rehabilitation of the juvenile offender have been the emphasis of the juvenile system. What is seemingly lost is

concern for the victim and the community. Often these juveniles have committed crime after crime after crime - they are, in fact, experienced criminals who are quite familiar with the system. In reality, they have "beaten" the system which claims to rehabilitate them.

According to Boland and Wilson, juvenile offenders usually remain in their own community when committing crimes.[8] If these juveniles repeatedly beat the system, the victim feels no sense of justice. In fact, the victim may be intimidated or even terrorized by the offender.

The current juvenile justice system has other impacts on the community. Once the juvenile "learns the ropes," he understands that he has little to fear from the law enforcement community. The system does little or nothing to deter future criminal activity.

Such trends also set a model for younger juveniles in the community. They can watch the older, more experienced juvenile offenders who commit crimes get caught and yet experience few, if any, sanctions from the system. It can make crime look exciting and inviting.

Some might argue conversely that current practices <u>do</u> deter future criminal activity. That is, after all, the purpose of the juvenile justice system. For the greatest majority of juvenile offenders, this may in fact be the case. Yet, we today are not focusing on the whole range of juvenile delinquency. We have narrowed our scope considerably to include only that very small percentage of juvenile offenders who repeatedly commit serious crimes against society. Even for the wide range of juvenile offenders, recent literature seems to suggest that very little works. As Barry Feld has stated, "on the one hand we're asking judges to tell us if a kid is going to get better when in fact, we can't really say if anyone will with any degree of certainty."[9]

Study after study has recognized and identified a cohort of habitual

juvenile offenders who pose a serious threat to the community. It seems to us that we should not be focusing on the legitimacy of the term "juvenile repeat offender" in the system. The real issue is to question the legitimacy of the current juvenile justice system given the threat posed by the serious repeat offender.

The SHO/DI Program as an Initial Response

The focus of the program today is on the repeat offender. Thus it is especially appropriate to discuss a new federal initiative designed to determine strategies for dealing effectively with this type of juvenile.

In May 1983, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) provided funding for the Juvenile Serious Habitual Offender/ Drug Involved (SHO/DI) program. SHO/DI is an 18-month research, test and demonstration project being implemented in five cities: Portsmouth, Virginia; San Jose, California; Oxnard, California; Colorado Springs, Colorado; and Jacksonville, Florida. The program is designed to focus on the juvenile who is out there committing serious crimes and doing it repeatedly. Another aspect of the SHO/DI project is to identify juvenile drug-related crime in the cities.

The next question is, of course, what are the specific definitions for the program? What exactly is a "serious juvenile offender?" How many crimes must one commit before he is habitual? Does the purchase of one joint constitute drug involvement?

The issue is somewhat clouded by the fact that this is a national project being conducted in five jurisdictions in four states. We have run into the same difficulties as other researchers - the problem of different juvenile laws among states, the differences in the procedures of criminal justice agencies, the general lack of uniformity in the juvenile justice

system. All of this is coupled with varying levels of interagency cooperation as well as the differing kinds of criminal activity prevalent in each of the cities. Realistically we must develop standards which are not only in agreement with state laws but which also must be agreeable to the police department and the prosecutor's office.

In Portsmouth, Virginia, the lead site for the SHO/DI program, this was partially accomplished by modeling the criteria after standards developed under the city's Major Offender Program.[10] This program, aimed at adult offenders, has proven to be successful and also has a good deal of support among local law enforcement agencies.

The SHO/DI criteria, like the Major Offender Program, are largely based on the Serious Crime Scale in which points are assigned for specific categories of criminal activity. There are a number of alternative ways to qualify for the program.

If an offender has committed a Class A felony and has amassed 15 points or more on the Serious Crime Scale, he will be selected for the program. Another way a juvenile may be included in the program is if he has committed a Class A or Class B felony in addition to one of the following:

A. A conviction for a prior Class A felony.

B. Two or more prior convictions for any felony.

C. Committed present felony while on probation or aftercare for any prior felony conviction.

D. Committed present felony while charges are pending for any Class A or Class B felony.

E. Has no prior felony conviction or has one prior felony conviction for a felony other than a Class A felony and has accumulated sufficient misdemeanor points.

Finally, a juvenile can qualify for the SHO/DI program when he has accumulated 15 or more points on the Misdemeanor Scale and the present

offense is a felony.

The Misdemeanor Point Scale is adapted from a similar scale developed in Racine, Wisconsin.[11] The inclusion of the Misdemeanor Point Scale provides an opportunity to systematically deal with habitual juvenile offenders who repeatedly threaten the security of the community.

In Portsmouth, the SHO/DI criteria were developed by the police department in close concert with the Commonwealth's Attorney's office. When a juvenile offender qualifies for the program, every attempt will be made to eliminate or reduce pre-trial delays, case dismissals, plea bargaining and sentence reductions.

It is hoped that by concentrating law enforcement activities on these serious habitual juvenile offenders, several objectives will be accomplished.

First, juvenile criminal activities in each city will be reduced. Also, if the juvenile offenders begin to feel the effects of this program, it may deter other juveniles who, in the past have had little to fear from the juvenile justice system.

Another aspect of the program is to reduce drug-related crime among juveniles. One of the difficulties in any juvenile crime program is the lack of available data. This is especially true for drug-related information. Although some pieces of data have been collected over time, currently there is no coordination of the information. One of the outcomes of the SHO/DI program is that we will be providing a means for gathering data and coordinating a juvenile information system.

The Future of Juvenile Justice

Some of you here today will claim that ours is an attack on the juvenile justice system. In fact, I am not arguing against the two-track

system. For most juveniles, it is appropriate. But we are not talking about most juveniles. Certainly our program is a law enforcement approach to juvenile justice. When you're dealing with those juveniles whose criminal activity is serious and habitual, the rehabilitative approach has been given a chance and has not worked. I think we need to recognize this fact and develop more strategies to deal effectively with these kinds of kids.

Perhaps what would be most effective, as Boland and Wilson have suggested, is a two-track system based, not on age, but rather on the nature of the criminal activity.[12] This would serve to protect the rights of juveniles while at the same time, protecting society.

It has been argued that programs such as the SHO/DI program "label" these juveniles. In reality, SHO/DI simply establishes a systematic means of identifying them. These juveniles long ago labeled themselves and they usually have extensive juvenile records to support it. Is it not our responsibility to finally recognize the problem, legitimize it and find the means to deal with it?

Footnotes

[1]F. E. Zimring, "The Serious Juvenile Offender: Notes on an Unknown Quantity," National Symposium on the Serious Juvenile Offender (Minneapolis, September 19-20, 1977).

[2]Roger B. McNally, "Juvenile Court: An Endangered Species," Federal Probation 45 (March 1983) 32-36.

[3]Barry C. Feld, "The Legal Response to the 'Hard-Core' Juvenile - The Offender or the Offense," National Symposium on the Serious Juvenile Offender (Minneapolis, September 19-20, 1977), p. 130.

[4]Barbara Boland, "Fighting Crime: The Problem of Adolescents," Journal of Criminal Law and Criminology 71 (Summer 1980) 94-97.

[5]Paul A. Strasburg, Violent Delinquents - A Report to the Ford Foundation (New York: Simon and Schuster, 1978); McNally, 1983; Barry C. Felt "Delinquent Careers and Criminal Policy," Criminology 21 (May 1983) 195-212.

[6]Strasburg, p. 2.

[7]Petersilia, Joan and Lavin, Marvin. Targeting Career Criminals: A Developing Criminal Justice Strategy. Santa Monica, California: The RAND Corporation, 1978.

[8]Boland, Barbara and Wilson, James Q. "Age, Crime and Punishment." The Public Interest. 51 (1978): 22-34.

[9]Should Juvenile Offenders be Handled by a Separate Juvenile Justice System? A Debate for the Ohio Serious Juvenile Offender Project. Cleveland: Federation for Community Planning, March, 1983. p. 10.

[10]Pindur, Wolfgang and Lipiec, Stanley P. "Prosecution of the Habitual Offender: Evaluation of the Portsmouth Commonwealth's Attorney Major Offender Program." University of Detroit Journal of Urban Law. 58 (Spring, 1981): 433-457.

[11]Racine Police Department. Career Delinquent Program. Racine, Wisconsin, 1978.

[12]Boland and Wilson, 1978.

APPENDIX II

Preventing Repeat Delinquency

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Remarks prepared for oral presentation at the Conference on Juvenile Repeat Offenders, University of Maryland, College Park, Maryland, 8 December 1983. I am grateful for the counsel of Michael S. Cook on a draft of parts of this talk. I am also grateful for grants from the National Institute of Education and the National Institute for Juvenile Justice and Delinquency Prevention which have supported, in part, my work in the area of delinquency prevention for the past several years. The opinions expressed are my own, and do not necessarily reflect the position or policy of either Institute.

Preventing Repeat Delinquency

The conference organizers have presented me with an inviting smorgasboard of topics to discuss. Presented with this array of topics--the efficacy of restitution, community service and other programs; early intervention strategies involving schools, families, police; the legitimacy and utility of prediction of repeat offending; the reasons recidivism occurs; and the contributions of families to the success of rehabilitation--I feel like a hungry ant at a picnic. Where shall I begin? Like the ant, I'll nibble away at several of these topics in youth crime, but I will not take a very big bite out of any of them.

Early Intervention with the "Pre-Chronic" Offender

I'll say a few words about early intervention and how the justice system, schools, and families might approach the task of becoming effective in this area. I am going to start by giving a plug for the value of theory. Now, I know theory has a bad reputation. Theory will never solve the problems you face: You will solve the problems. The best I can hope to do is suggest that theory provides some ways to think about structuring your problem-solving efforts.

One of the most valuable insights we get from the behavioral sciences is that it is not very useful when thinking about crime to ask, "Why did the person do it?" The ques-

tion (as Travis Hirschi has suggested) should be, "Why doesn't everyone do it?" Why doesn't everyone behave in more brutish, thieving, and nasty ways than they do? My preference for the latter question is that it focuses attention on ways we can control or restrain undesirable behavior rather than looking for motivation to deviate. The problem of crime control and reducing the risk of recidivism becomes a problem of looking for ways to restrain the juvenile from misconduct.

Most of us engage in some form of "bad" behavior some of the time. There is probably no one in the room who has not at one time or another engaged in behavior that is illegal, or that is regarded as immoral or objectionable by someone---usually your mother. But most of us restrain ourselves from misconduct most of the time because we have powerful stakes in conformity. We have something to lose by misconduct--jobs, the love of mates, the esteem of colleagues, our freedom, and even self-esteem.[1] One way of thinking about reducing the risk of future delinquent behavior, then, involves the search for effective restraints against miscon-

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[1] The ideas developed here were first suggested in comprehensive form (and in a different form) by Hirschi. Gottfredson and Cook have also developed a related set of ideas more fully. See T. Hirschi, Causes of Delinquency, Berkeley, University of California Press, 1969; T. Hirschi, "Crime and the Family," in J. Q. Wilson (ed.), Crime and Public Policy, San Francisco, Institute for Contemporary Studies, 1983; also see G. D. Gottfredson & M. S. Cook, "A Cognitive Theory of Person-Environment Interaction with Implications for Social Control," Baltimore, Johns Hopkins University, Center for Social Organization of Schools, 1983.

duct. Ultimately, we want to develop in the youthful offender attachments to valued others whose approval or affection may be temporarily withdrawn when the person engages in misconduct. We want the person to see that his or her career prospects will be diminished by delinquent behavior. We want the person to incorporate some common assumptions about appropriate behavior into his or her automatic, unconscious, routines for making split-second decisions about behavior.

How can we possibly do that? Well, your mother did it in your case; there must be a way. One simple set of ideas comes from the work of scientists[2] who have developed techniques to reduce aggressive behavior and stealing among very difficult boys. This work (and learning research more generally) suggests five things that are necessary to restrain behavior. First, the persons (mother, father, police officer, teacher) interacting with the young offender must be able to recognize the deviant behavior when it occurs. Second, these persons must watch for the behavior. Third, they must punish it when it occurs. In psychological jargon this is called "contingent punishment." Fourth, the response to the behavior should occur a high proportion of the time--it

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[2] See G. R. Patterson, "Children Who Steal," in T. Hirschi & M. Gottfredson (eds.), Understanding Crime, Beverly Hills, Sage, 1980. Also see J. G. Reid & G. R. Patterson, "The Modification of Aggression and Stealing Behavior of Boys in the Home Setting," in A. Bandura & E. Ribes (eds.), Behavior Modification: Experimenatal Analysis of Aggression and Delinquency, New Jersey, Lawrence Erlbaum Associates, 1976.

should be frequent. Fifth, an alternative way to gain the rewards the misconduct has gained in the past should be provided. When delinquent behavior persists, one or more of these five conditions are not met.

What then are the roles of the justice system, families, schools? They must identify, watch for, and systematically punish instances of misconduct; they should respond to the behavior contingently and frequently; and they should try to reward alternative behavior. Families, schools, and the justice system do not do as good a job of doing these five things as they might. This situation arises for several reasons.

Families

First the family. It is often noted that about half the crimes committed by young people are committed by about 6% of them.[3] What is less often noted is that about half the crimes committed are probably committed by people from about 5% of all families.[4] Some families do not know how to recognize delinquent behavior, do not have enough adults in the home to watch for delinquent behavior, do not have enough

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[3] See M. Wolfgang, R. Figlio, & T. Selin, Delinquency in a Birth Cohort, Chicago, University of Chicago Press, 1972; and L. W. Shannon, Assessing the Relationship of Adult Criminal Careers to Juvenile Careers, Washington, Office of Juvenile Justice and Delinquency Prevention, 1982.

[4] D. J. West & D. P. Farrington, The Delinquent Way of Life, London, Heinemann, 1977.

power, resources or influence effectively to punish misconduct and reward alternative behavior, or do not have the requisite knowledge or skills to apply these procedures frequently and contingently. Research in applied behavior analysis implies that families can sometimes become more competent in these ways.[5] Parents can learn to apply the five principles effectively.

Schools

The schools also often fall short in applying the five principles for restraining behavior. Our research and experience working with schools implies that they often have vague rules that are poorly understood by students and teachers, that rule enforcement is flabby and inconsistently applied, and that a limited range of responses to student conduct are even attempted.[6] But the prospect is bright; schools can make rules clearer, enforcement firmer and more

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[5] See the work by Reid and Patterson cited above, and see J. F. Alexander & B. V. Parsons, "Short-term behavioral intervention with delinquent families: Impact on process and recidivism," Journal of Abnormal Psychology, 1973, 81, 219-225.

[6] See G. D. Gottfredson & D. C. Daiger, Victimization in Six Hundred Schools: An Analysis of the Roots of Disorder, New York, Plenum, in press; G. D. Gottfredson, "Schooling and Delinquency," In S. E. Martin, L. B. Sechrest, & R. Redner (eds.), New Directions in the Rehabilitation of Criminal Offenders, Washington, DC, National Academy Press, 1981; G. D. Gottfredson, "Interim Summary of the School Action Effectiveness Study," Baltimore, Johns Hopkins University, Center for Social Organization of Schools, 1983. See also J. M. McPartland & E. L. McDill (eds.), Violence in Schools, Lexington, MA, Lexington, 1977.

consistent, and the range of responses broader. By paying close attention to the application of the five principles in the schools, misconduct can be reduced.[7] Promising techniques exist for increasing the appropriateness, immediacy, and scope of school responses to student behavior and we should experiment more zealously with these techniques.[8] Recently, I have suggested a management structure that should help schools test these ideas by collaborating with researchers.[9] One Baltimore junior high school we are working with now is experimenting with disciplinary procedures designed follow the five principles in responding to student behavior.

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[7] D. C. Gottfredson, "Project PATHE: Second Interim Report," In G. D. Gottfredson, D. C. Gottfredson, & M. S. Cook (eds.), The School Action Effectiveness Study: Second Interim Report (Part II), Baltimore, Johns Hopkins University, Center for Social Organization of Schools, Report No. 342, 1983.

[8] I have in mind the following techniques or ideas: B. M. Atkeson & R. Forehand, "Home-based reinforcement programs designed to modify classroom behavior: A review and methodological evaluation," Psychological Bulletin, 1979, 86, 1298-1308; E. R. Howard, School Discipline Desk Book, West Nyack, NY, Parker, 1978; L. Canter, Assertive Discipline, Los Angeles, Author, 1977.

[9] G. D. Gottfredson, "A Theory-Ridden Approach to Program Evaluation: A Method for Stimulating Researcher-Implementer Collaboration," American Psychologist, in press.

The Justice System

The justice system is constructed in such a way that it may be nearly impossible for it to intervene to reduce the risk of recidivism. Remember the five criteria for effective intervention to restrain delinquent behavior? Recognize the behavior, watch for it, punish it when it occurs, do this frequently, and reward alternative behaviors. The weakest link in the chain in the justice system is the third part of this formula: providing contingent punishment. (Of course it is also very difficult to watch everyone all the time, but even if that problem could be solved the third link would almost certainly be lacking.) To explain why the justice system will be ineffective in preventing recidivistic delinquent behavior, I have to say a few words about effective punishment.

Psychologists have studied learning for decades. We know that by manipulating environmental rewards and punishments it is possible to regulate behavior, and we know that it is easier to regulate behavior--to train people--if the environmental responses have certain characteristics. For example, we know that cueing, modeling, and clear descriptions of the expected behavior are useful. We know something about effective rewards and punishments, too.

The general public has some pretty bizarre misconceptions about what behavior specialists mean by punishment. Punish-

ment is defined as an environmental event that reduces the behavior it follows. By punishment I emphatically do not mean painful electric shock, long prison terms, cruel flogging or anything like that.[10] In the sense that I am using the word, punishment does mean the withdrawal of desired privileges, snacks, television, the use of a car, or the freedom to engage in a desired activity for brief periods of time. We know some other things about effective punishment: It should closely follow the behavior it is designed to reduce, and it should occur following the behavior a high proportion of the time.

The justice system uses punishment in entirely different ways. Some of these ways are self-defeating--they remove some potentially effective tools for reducing the risk of subsequent delinquent behavior. The justice system meets out punishment to "fit the crime" or to incapacitate people society is afraid of. It does this slowly and deliberately. When and if a young person is arrested for a crime, he or she may or may not be prosecuted. In the majority of cases a person is neither caught, prosecuted, nor convicted (with ensuing "punishment"). In psychological jargon, the punishment is not "contingent" on the behavior and it is not fre-

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[10] Painful experiences do of course result in learning to avoid the behaviors that cause them. For example, most of us have learned not to touch hot objects. And, rats learn to avoid electric shocks quite readily. For ethical reasons, these painful punishments are not used with people. Fortunately, the concept of punishment is broader than painful punishment, as the text makes clear.

quent. The justice system's "punishment" does not match the psychologist's definition of punishment. It does not immediately follow the behavior. If anything at all is learned as a result of the punishment it is most likely that punishment is unpredictable.

In short, the requirement of due process and the philosophy of just deserts work against the effectiveness of punishment in the justice system in reducing recidivism.

A second characteristics of the "punishments" applied in the justice system render them impotent as rehabilitative tools. Sentences are so long that they make it impossible to use the withdrawal of freedom as an effective sanction. Remember that one characteristic of effective nonsevere punishment is that it is brief so that it can be frequently used as a response to behavior. For example, when a behavioral technique known as "time out" is used in changing behavior, a young person engaging in disruptive behavior may be sent to a room with nothing to do for a brief period of time--as brief as five minutes. The "time out" is time out from positive reinforcement--time out from the influences in the environment that have been supporting or encouraging the disruptive behavior. This time out is punishment. But when the time out is over, the person has a fresh start. He or she must be treated as if the incident were forgotten. This forgetting serves an essential purpose. It gives the young

person something to lose by subsequent misconduct. Anytime we structure a system so that a person has nothing to lose by misconduct or delinquent behavior, we weaken the restraints against that behavior.

Unfortunately, when the justice system seeks ways to become more effective, it often looks to more severe sanctions. More time in prison is bound to be an ineffective rehabilitative tool. It removes a potentially effective mechanism for providing rapid, brief, and contingent punishment. It also provides few opportunities to learn alternative rewarding behaviors. There is the possibility that the justice system could find ways to preserve due process and simultaneously administer briefer, more appropriate punishments. But realistically we had better place our bets for prevention elsewhere--in the family and in the school.

The Prediction Problem

I have been asked to discuss the legitimacy and utility of prediction models in the development of prevention programs. There are really two questions here: (a) Is it useful and fair to use prediction to identify candidates for preventive interventions? (b) Do the prediction equations tell us anything about the design of preventive interventions? These are quite different questions. The second question is easy to answer and the answer is easy to understand. In contrast, the second question is difficult to answer and the answer is difficult to understand.

Prediction Models and the Design of Interventions

Prediction models are useful in designing prevention programs because the variables that predict subsequent delinquent behavior suggest points to intervene. For example we know that association with delinquent peers, living in a single parent family, failure in school, living in a high-crime neighborhood, lack of belief in the validity of rules, and little commitment to future educational or career goals are all associated with delinquent behavior.[11] This provides us with prevention ideas: Sever delinquent peer relations, find ways to strengthen family controls on behavior, intervene in the school to make sure everyone experiences success, avoid social policies that create high crime neighborhoods, put reward structures in place that foster belief in the validity of rules, and promote realistic stakes in conformity through educational and vocational pursuits. The policy implications of these ideas ought to be straightforward, even though designing and implementing the programs themselves will be difficult.

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[11] See G. D. Gottfredson, "Schooling and Delinquency," In S. E. Martin, L. B. Sechrest, & R. Redner (eds.), New Directions in the Rehabilitation of Criminal Offenders, Washington, DC, National Academy Press, 1981.

Prediction and the Identification of Individuals

The appropriateness of the use of prediction models in identifying candidates for participation in preventive interventions is a matter of both practical and ethical concern. Information about juveniles can be used to place them into categories that are demonstrably associated with risk of subsequent delinquent or criminal behavior.[12] The problem is that these risk categories are not very efficient, especially at the extremes. Only a small proportion of the population will develop long histories of offenses. It is this small group that the justice system might most want to identify to allocate scarce resources for prevention (or for incapacitation). But the smaller the proportion the less efficient the identification becomes. Usually, lots of people who do not develop the long offense histories are placed in the high risk category by prediction devices.[13] This is

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[12] For example, L. W. Shannon, Assessing the Relationship of Adult Criminal Careers to Juvenile Careers, Washington, DC, Office of Juvenile Justice and Delinquency Prevention, 1982; L. W. Shannon, "Risk Assessment vs. Real Prediction: The Prediction Problem and Public Trust," Iowa City, University of Iowa, Iowa Urban Community Research Center, 1983; D. M. Gottfredson, "Prediction Methods in Juvenile Delinquency," in President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, Washington, DC, U.S. Government Printing Office, 1967.

[13] The classic and best discussions of this issue, known as the "base rate problem," are the following: H. G. Gough, "Clinical versus Statistical Prediction in Psychology," in L. Postman (ed.), Psychology in the Making, New York, Knopf, 1966; P. E. Meehl, Clinical versus Statistical Prediction, Minneapolis, University of Minnesota Press, 1954. Even if one restricted the prediction exercise to persons who have

where the ethical issue, and issues of justice, arise. Unless one adopts a strong utilitarian view--that an aggregate good can outweigh individual injustice--any use of such prediction models to identify candidates for punishing interventions of any kind are excluded. And even if one does take a utilitarian view, it is just not that clear that the risk groupings developed using prediction models are efficient enough to result in taking much of a bite out of crime. From a just deserts perspective, the use of any punitive intervention based on a forecast of future behavior is out of the question.[14]

But what of using prediction models to identify candidates for non-punitive preventive interventions? Here ethical and practical issues still arise, but this is a more legitimate use of prediction under certain circumstances. The circumstances I have in mind are that this use of prediction models is made within the context of an experiment. This application of prediction should be evaluated. This is necessary because we have instances of early identification and the application of preventive interventions with both

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already committed one or two offenses, with the resulting less extreme proportions in the marginal distributions for the prediction tables, it is a pie-in-the-sky dream that this problem will go away.

[14] A. von Hirsch, "Selective Incapacitation: False Positives and Undeserved Punishment," Paper presented at the annual meeting of the American Society of Criminology, Denver, 12 November 1983.

positive and negative results.[15] The fact is that we are uncertain about the effects of preventive interventions and about the effects of identifying high risk youths. In such cases, it is imperative to evaluate the consequences of the application of both prediction models and preventive interventions.[16]

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[15] A negative instance is J. McCord, "A Thirty-Year Followup of Treatment Effects," American Psychologist, 1978, 33, 284-289. A positive instance is D. C. Gottfredson, "Project PATHE: Second Interim Report," In G. D. Gottfredson, D. C. Gottfredson, & M. S. Cook (eds.), The School Action Effectiveness Study: Second Interim Report (Part II), Baltimore, Johns Hopkins University, Center for Social Organization of Schools, Report No. 342, 1983.

[16] For an argument for such an imperative see G. D. Gottfredson, "Penal policy and the evaluation of rehabilitation," in A. W. Cohn & B. Ward (eds.), Improving management in criminal justice, Beverley Hills, Sage, 1980; or G. D. Gottfredson, "Making Inferences about Project Effectiveness," in G. D. Gottfredson (ed.), The School Action Effectiveness Study: First Interim Report (Report No. 325), Baltimore, The Johns Hopkins University, Center for Social Organization of Schools, 1982.

APPENDIX III

University of Baltimore School of Law
Asst. Prof. Natalie H. Rees

Confidentiality: Maryland Statutes and Rules

§ 3-802. Purposes of subtitle.

(a) The purposes of this subtitle are:

(1) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

(2) To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior;

(3) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(4) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents.

(5) To provide judicial procedures for carrying out the provisions of this subtitle.

(b) This subtitle shall be liberally construed to effectuate these purposes.

§ 3-811. Certain information inadmissible in subsequent proceedings.

(a) A statement made by a participant while counsel and advice are being given, offered, or sought, in the discussions or conferences incident to an informal adjustment may not be admitted in evidence in any adjudicatory hearing or in a criminal proceeding against him prior to conviction.

(b) Any information secured or statement made by a participant during a preliminary or further inquiry pursuant to § 3-810 or a study pursuant to § 3-818 may not be admitted in evidence in any adjudicatory hearing except on the issue of respondent's competence to participate in the proceedings and responsibility for his conduct as provided in § 12-107 of the Health-General Article where a petition alleging delinquency has been filed, or in a criminal proceeding prior to conviction.

(c) A statement made by a child, his parents, guardian or custodian at a waiver hearing is not admissible against him or them in criminal proceedings prior to conviction except when the person is charged with perjury, and the statement is relevant to that charge and is otherwise admissible.

(d) If jurisdiction is not waived, any statement made by a child, his parents, guardian, or custodian at a waiver hearing may not be admitted in evidence in any adjudicatory hearing unless a delinquent offense of perjury is alleged, and the statement is relevant to that charge and is otherwise admissible.

§ 3-824. Effect of proceedings under subtitle.

(a) (1) An adjudication of a child pursuant to this subtitle is not a criminal conviction for any purpose and does not impose any of the civil disabilities ordinarily imposed by a criminal conviction.

(2) An adjudication and disposition of a child in which the child's driving privileges have been suspended may not affect the child's driving record or result in a point assessment. The State Motor Vehicle Administration may not disclose information concerning or relating to a suspension under this subtitle to any insurance company or person other than the child, the child's parent or guardian, the court, the child's attorney, a State's attorney, or law enforcement agency.

(3) However, an adjudication of a child as delinquent by reason of his violation of the State vehicle laws shall be reported by the clerk of the court to the Motor Vehicle Administration, which shall assess points against the child under Title 16, Subtitle 4 of the Transportation Article, in the same manner and to the same effect as if the child had been convicted of the offense.

(b) An adjudication and disposition of a child pursuant to this subtitle are not admissible as evidence against the child:

(1) In any criminal proceeding prior to conviction; or

(2) In any adjudicatory hearing on a petition alleging delinquency; or

(3) In any civil proceeding not conducted under this subtitle.

(c) Evidence given in a proceeding under this subtitle is not admissible against the child in any other proceeding in another court, except in a criminal proceeding where the child is charged with perjury and the evidence is relevant to that charge and is otherwise admissible.

(d) An adjudication or disposition of a child under this subtitle shall not disqualify the child with respect to employment in the civil service of the State or any subdivision of the State.

§ 3-827. Order controlling conduct of person before court.

Pursuant to the procedure provided in the Maryland Rules, the court may make an appropriate order directing, restraining, or otherwise controlling the conduct of a person who is properly before the court, if:

(i) The court finds that the conduct:

(a) Is or may be detrimental or harmful to a child over whom the court has jurisdiction; or

(b) Will tend to defeat the execution of an order or disposition made or to be made; or

(c) Will assist in the rehabilitation of or is necessary for the welfare of the child; and

(ii) Notice of the application or motion and its grounds has been given as prescribed by the Maryland Rules.

§ 3-828. Confidentiality of records.

(a) A police record concerning a child is confidential and shall be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and confidential use of the record by the Juvenile Services Administration or in the investigation and prosecution of the child by any law enforcement agency.

(b) A juvenile court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and the use of the court record in a proceeding in the court involving the child, by personnel of the court, the State's attorney, counsel for the child, or authorized personnel of the Juvenile Services Administration.

(c) The court, on its own motion or on petition, and for good cause shown, may order the court records of a child sealed, and, upon petition or on its own motion, shall order them sealed after the child has reached 21 years of age. If sealed, the court records of a child may not be opened, for any purpose, except by order of the court upon good cause shown.

(d) This section does not prohibit access to or use of any juvenile record by the Maryland Division of Parole and Probation when the Division is carrying out any of its statutory duties at the direction of a court of competent jurisdiction, if the record concerns a charge or adjudication of delinquency.

(e) This section does not prohibit access to and use of any juvenile record by the Maryland Division of Correction when the Division is carrying out any of its statutory duties if: (1) the individual to whom the record pertains is committed to the custody of the Division; and (2) the record concerns an adjudication of delinquency.

(f) Subject to the provisions of § 4-102 of the Health-General Article, this section does not prohibit access to or use of any juvenile record for criminal justice research purposes. A record used under the subsection may not contain the name of the individual to whom the record pertains, or any other identifying information which could reveal the individual's name.

Rule 897. Appeals From Courts Exercising Juvenile Jurisdiction — Confidentiality.

In appeals taken from a determination with respect to a child by a court exercising juvenile jurisdiction, in order to insure confidentiality as to the identity of the child:

(i) The proceedings in this Court shall be styled "In re ..... (first name and initial of last name of child)" and the name of the child shall be omitted.

(ii) The name of the child shall not be used in any opinion of this Court, oral argument, brief, record extract, petition or other document pertaining to the appeal which is generally available to the public.

(iii) The record shall be transmitted to this Court in such manner as to insure the confidentiality of its contents.

(iv) Except for the Court, law clerks, personnel of the clerk's office, parties and their counsel, the record shall not be open to inspection while in the custody of this Court except by order of this Court.

Rule 921. Court Records — Confidentiality.

a. *Sealing of Records.*

Files and records of the court in juvenile proceedings, including the docket entries and indices, are confidential and shall not be open to inspection except by order of the court. On termination of the court's juvenile jurisdiction, the files and records shall be sealed pursuant to section 3-828 (c) of the Courts Article, and all index references shall be marked "sealed."

b. *Unsealing of Records.*

Sealed files and records of the court in juvenile proceedings may be unsealed and inspected only by order of the court.

Rule 1097. Appeals From Courts Exercising Juvenile Jurisdiction — Confidentiality.

In appeals taken from a determination with respect to a child by a court exercising juvenile jurisdiction, in order to insure confidentiality as to the identity of the child: (i) The proceedings in this Court shall be styled "In re ..... (first name and initial of last name of child)" and the name of the child shall be omitted.

(ii) The name of the child shall not be used in any opinion of this Court, oral argument, brief, record extract, petition or other document pertaining to the appeal which is generally available to the public.

(iii) The record shall be transmitted to this Court in such manner as to insure the confidentiality of its contents.

(iv) Except for the Court, law clerks, personnel of the clerk's office, parties and their counsel, the record shall not be open to inspection while in the custody of this Court except by order of this Court.

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JUVENILE JUSTICE BRIEFING

Appropriations

The President on Monday November 28, signed the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations bill for fiscal year 1984, which appropriates $70.155 million for juvenile justice programs and the Office of Juvenile Justice and Delinquency Prevention through FY '84. $70 million was appropriated in 1983 for juvenile justice.

Reauthorization

The Juvenile Justice and Delinquency Prevention Act, under which OJJDP is currently operating, expires October 1, 1984.

Legislation has been introduced in the House and Senate which could be used to extend the Juvenile Justice and Delinquency Prevention Act through fiscal year 1988. This vehicle, The Missing Children Assistance Act of 1983, would also create a new section in the JJDP Act to establish a national resource center for missing children and a national toll free telephone number for reporting information on missing children; and would provide $10 million a year for three years in grants for programs to aid in the location of missing children or the prevention of their abduction.

If the Missing Children Act (S.2014, sponsored by Sen. Arlen Specter, R-PA, and H.R.4300, sponsored by Rep. Paul Simon, R-IL) were to be enacted in its current form, juvenile justice programs would be extended through fiscal 1988.

As Congress is out of session until January 23, 1984, action is not expected on this legislation until later in the session. Sponsors of the legislation in both chambers claim the provision in the missing children measure to extend authorization of the JJDP Act is not intended as a way to circumvent the normal procedures for reauthorizing the program. Hence, other legislative activities may address reauthorization.

(Note: The Budget Impoundment Act requires that legislation be transmitted from the Administration to Congress in May of the year prior to the expiration of authorizing legislation if the Administration wants to take a postion on the issue. The President has not done so. However, since many procedures of Congress are not always strictly adhered to, this does not mean the Administration is necessarily restricted from taking a position at some future point in time, nor that the Administration does not want to take a position.)

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Senate Action

When, and in what form the juvenile justice activities in the Senate will take is unclear. It is expected that the Senate (Senator Specter is Chairman of the Senate Judiciary Subcommittee on Juvenile Justice, which has jurisdiction over the program) may tie in two separate bills, sponsored by Senator Specter, (S.520 and S.522), which amend the JJDP Act to protect dependent children from institutional abuse and require the removal of juveniles from adult jails and lockups by 1985. Although neither of these measures could directly force a state institution to alter its practices, their effect is to provide ground in the United States Civil Code for an individual to bring suit against non-compliant institutions, including state and local institutions, in a federal court of law. A constitutional basis for these measures is found in the fourteenth amendment which provides that no state shall deny citizens due process of the law or equal protection under the law.

S.520, The Dependent Children's Protection Act of 1983, would propose to protect dependent children from institutional abuse by preventing states from assigning juvenile non-offenders to secure detention, treatment or correctional facilities. Any person under age 18 who has not been adjudicated for an offense considered criminal if committed by an adult is considered a juvenile non-offender by definition set forth in that measure. The proposal is intended to protect the liberty, safety, and rights to care and treatment of non-offenders.

S.522, the Juvenile Incarceration Protection Act of 1983, calls for the removal of juveniles from adult jails and lockups by 1985. Exceptions may be permitted by the Attorney General for those areas with "very low population density with respect to the detention of juveniles"; and where no alternative exists for juveniles accused of a serious crime against a person and no regular contact is made with adult prisoners.

Although there is no opposition to the particular objectives of either bill, the states' rights issue is of major concern. Attaching either bill could disrupt unified support for the JJDP Act. The governors are in opposition to the pre-emption of state authority.

House Action

Separate authorizing legislation, other than the Missing Children Assistance Act, is expected to be proposed in this Chamber. Major changes in the authorizing legislation are not expected in the House, where hearings will be held early in the 1984 session by the House Education and Labor Committee, Subcommittee on Human Resources. The states may be provided with additional time to comply with the jail removal requirement, however, the requirement itself is not expected to be diluted. Additionally, the House may examine the special emphasis program with respect to how funds are expended and may address the issue in separate hearings.

Administration

Reauthorizing legislation must be enacted by the end of the fiscal year. Although the administration has not supported the program in the past, the possibility that a position may be submitted to the Congress should not be ruled out. If a position is submitted, it is fairly safe to assume that it would re-orient the legislation towards violent and serious juvenile offenders.

Other Juvenile Justice Issues to Highlight

Child support enforcement: The intent of Congressional and gubernatorial supporters is to strengthen child support enforcement in an effort to decrease welfare payments. Legislation proposed by the Administration, The Child Support Enforcement Amendments of 1983, is pending in each chamber (H.R.3546, sponsored by Rep. Barber Canabel, Jr., R-NY; S.1691, sponsored by Sen. William Armstrong, R-CO).

Drinking age: Although legislation to raise the national drinking age to 21 is pending in the House (H.R.3870, sponsored by Rep. James J. Florio, D-NJ), a resolution of Congress expressing support for the drinking age to be set at 21 is more likely to pass. Despite strong support for raising the drinking age, there is a states' rights issue at stake.

Child pornography and the sexual abuse of children: These issues are receiving much attention in the states and federal legislation has been passed by both chambers of Congress to strengthen federal laws against the production and distribution of pornographic materials. (HR.3635, the Child Protection Act of 1983, sponsored by Rep. Harold S. Sawyer, R-MI, passed the House November 14, 1983; S.1469, which addresses the sexual exploitation of children, sponsored by Sen. Arlen Specter, R-PA, passed the Senate July 16, 1983.)

Omnibus legislation: S.1762, the Omnibus Crime Control and Safe Streets Act of 1983 includes provisions affecting juvenile justice. Title XI, Part A, addressing the sexual exploitation of children, is identical to S.1469. Title XII, Part A provides for the prosecution of certain juveniles as adults, including any juvenile over age 15 who commits a crime which is punishable as a felony if committed by an adult.

Serious and Violent Juvenile Offender

Though not specifically addressed through any one piece of legislation, the serious, violent juvenile repeat offender is a major concern of the states and at the federal level. Serious and violent juveniles represent only a small portion of delinquent juvenile individuals. There is also movement toward consideration of separate actions to change the present juvenile justice system, such as fingerprinting, public access to juvenile records and juvenile proceedings and the release of information to the press. Every state is dealing in some manner with these issues. We should keep in mind just what effect these isolated changes would have on the juvenile justice system and the traditional role of the juvenile court.

Overview

The prospects are pretty good that the Juvenile Justice and Delinquency Prevention Act, if re-enacted, will be similar to the present act. As to its continued funding and at what level, it is difficult to project beyond election year (1984).

Justice Assistance

The Department of Justice appropriations bill, signed by the President November 28, provides $67.3 million for justice assistance provided the Justice Assistance Act of 1983 is enacted. Of this amount $63.9 million would be made available for state and local assistance – $51.118 million in block grants and $12.780 million in discretionary grants.

Implementation of the Justice Assistance Act of 1983 could assist juvenile justice programs through federal assistance to states to support programs including those which:

address the serious and violent juvenile offender; address the career criminal; combat arson; disrupt illicit commerce in stolen goods; improve victim/witness assistance; provide for operational information systems which improve the effectiveness of criminal justice agencies; encourage combined citizen and law enforcement crime prevention efforts; meet the needs of drug-dependent offenders; training and technical assistance; alleviate prison and jail overcrowding; identify existing state and federal buildings suitable for prison use; provide alternatives to pretrial detention, jail and prison for non-violent offenders; and, address the critical problems of crime which are successful or likely to be proven successful.

12/7/83

S.1762 COMPREHENSIVE CRIME CONTROL ACT OF 1983:

REPORTED BY THE SENATE COMMITTEE ON THE JUDICIARY ON AUGUST 4, 1983.

INTRODUCED BY SENATORS THURMOND, LAXALT, BIDEN, AND KENNEDY.

TITLE I - BAIL REFORM
TITLE II - SENTENCING REFORM
TITLE III - FORFEITURE REFORM
TITLE IV - INSANITY DEFENSE REFORM
TITLE V - DRUG ENFORCEMENT AMENDMENTS
TITLE VI - JUSTICE ASSISTANCE ACT
TITLE VII - SURPLUS PROPERTY AMENDMENTS
TITLE VIII - LABOR RACKETEERING AMENDMENTS
TITLE IX - FOREIGN CURRENCY TRANSACTION AMENDMENTS
TITLE X - VIOLENT CRIME AMENDMENTS
TITLE XI - SERIOUS NON-VIOLENT OFFENSES
TITLE XII - PROCEDURAL AMENDMENTS

TITLE I - BAIL REFORM (SUBSTANTIALLY THE SAME AS S.215, INTRODUCED 1-27-83 BY THURMOND)

--PERMIT COURTS TO CONSIDER DANGER TO THE COMMUNITY IN MAKING BAIL DETERMINATIONS;

--TIGHTEN THE CRITERIA FOR POST-CONVICTION RELEASE PENDING SENTENCING AND APPEAL;

--PROVIDE FOR REVOCATION OF RELEASE AND INCREASED PENALTIES FOR CRIMES COMMITTED WHILE ON RELEASE; AND

--INCREASE PENALTIES FOR BAIL JUMPING.

TITLE II - SENTENCING REFORM (SUBSTANTIALLY THE SAME AS S.668, INTRODUCED 3-3-83 BY SENATOR KENNEDY WITH THURMOND AS COSPONSOR)

--ESTABLISH A DETERMINATE SENTENCING SYSTEM WITH NO PAROLE AND LIMITED "GOOD TIME" CREDITS;

--PROMOTE MORE UNIFORM SENTENCING BY ESTABLISHING A COMMISSION TO SET A NARROW SENTENCING RANGE FOR EACH FEDERAL CRIMINAL OFFENSE;

--REQUIRE COURTS TO EXPLAIN IN WRITING ANY DEPARTURE FROM SENTENCING GUIDELINES; AND

--AUTHORIZE DEFENDANTS TO APPEAL SENTENCES HARSHER AND THE GOVERNMENT TO APPEAL SENTENCES MORE LENIENT THAN THE SENTENCING COMMISSION GUIDELINES.

TITLE III - FORFEITURE REFORM (SAME AS SENATE PASSED S.2320 1-1-82, INTRODUCED BY THURMOND)

--FORFEITURE OF PROFITS AND PROCEEDS OF ORGANIZED CRIME ENTERPRISES;

--CRIMINAL FORFEITURE IN ALL NARCOTICS TRAFFICKING CASES;

--EXPANDED PROCEDURES FOR "FREEZING" FORFEITABLE PROPERTY PENDING JUDICIAL PROCEEDINGS;

--FORFEITURE OF SUBSTITUTE ASSETS WHERE OTHER ASSETS HAVE BEEN REMOVED FROM THE REACH OF THE GOVERNMENT;

--A BROADER SCOPE OF PROPERTY SUBJECT TO CRIMINAL FORFEITURE; AND

--EXPANDED USE OF ADMINISTRATIVE FORFEITURE IN NONCONTESTED CASES.

TITLE IV - INSANITY DEFENSE REFORM (SUBSTANTIALLY THE SAME AS S.105, INTRODUCED 1-26-83 BY THURMOND)

--LIMIT THE DEFENSE TO THOSE WHO ARE UNABLE TO APPRECIATE THE NATURE OR WRONGFULNESS OF THEIR ACTS;

--PLACE THE BURDEN ON THE DEFENDANT TO ESTABLISH THE DEFENSE BY CLEAR AND CONVINCING EVIDENCE;

--PREVENT EXPERT TESTIMONY ON THE ULTIMATE ISSUE OF WHETHER THE DEFENDANT HAD A PARTICULAR MENTAL STATE OR CONDITION; AND

--ESTABLISH PROCEDURES FOR FEDERAL CIVIL COMMITMENT OF PERSONS FOUND GUILTY BY REASON OF INSANITY IF NO STATE WILL COMMIT HIM.

TITLE V - DRUG ENFORCEMENT AMENDMENTS (SUBSTANTIALLY THE SAME AS S.2572 PROVISIONS WHICH PASSED SENATE 9-30-82, INTRODUCED BY THURMOND)

--STRENGTHEN FEDERAL PENALTIES APPLICABLE TO NARCOTICS OFFENSES;

--REDUCE THE REGULATORY BURDEN ON LAW-ABIDING MANUFACTURERS AND DISTRIBUTORS OF LEGITIMATE CONTROLLED SUBSTANCES; AND

--STRENGTHEN THE ABILITY OF THE DRUG ENFORCEMENT ADMINISTRATION TO PREVENT DIVERSION OF LEGITIMATE USES.

TITLE VI - JUSTICE ASSISTANCE ACT

--AUTHORIZE A MODEST PROGRAM OF FINANCIAL ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT TO HELP FINANCE ANTI-CRIME PROGRAMS OF PROVEN EFFECTIVENESS; AND

--STREAMLINE THE COMPONENTS OF THE DEPT. OF JUSTICE RESPONSIBLE FOR STATISTICAL, RESEARCH AND OTHER ASSISTANCE TO STATE AND LOCAL LAW ENFORCEMENT.

TITLE VII - SURPLUS PROPERTY AMENDMENTS (SAME AS S.2572, INTRODUCED BY THURMOND AND PASSED SENATE 9-30-82)

--WOULD FACILITATE DONATION OF SURPLUS FEDERAL PROPERTY TO STATE AND LOCAL GOVERNMENTS FOR URGENTLY NEEDED PRISON SPACE.

TITLE VIII - LABOR RACKETEERING AMENDMENTS

--RAISE FROM FIVE TO TEN YEARS THE PERIOD OF TIME THAT A CORRUPT OFFICIAL CAN BE DEBARRED FROM UNION OR TRUST FUND POSITIONS; AND

--MAKE DEBARMENT EFFECTIVE UPON THE DATE OF CONVICTION RATHER THAN THE DATE ALL APPEALS ARE EXHAUSTED.

TITLE IX - FOREIGN CURRENCY TRANSACTION AMENDMENTS (SAME AS S.2572, INTRODUCED BY THURMOND AND PASSED SENATE 9-30-82)

--ADD AN "ATTEMPT" PROVISION TO EXISTING LAWS PROHIBITING TRANSPORTATION OF CURRENCY OUT OF THE UNITED STATES IN VIOLATION OF REPORTING REQUIREMENTS;

--STRENGTHEN PENALTIES FOR CURRENCY VIOLATIONS AND AUTHORIZE PAYMENT OF REWARDS FOR INFORMATION LEADING TO THE CONVICTION OF MONEY LAUNDERERS; AND

--CLARIFY THE AUTHORITY OF U.S. CUSTOMS AGENTS TO CONDUCT BORDER SEARCHES RELATED TO CURRENCY OFFENSES.

TITLE X - VIOLENT CRIME AMENDMENTS (10 OUT OF 13 POINTS INCLUDED IN S.2572, INTRODUCED BY THURMOND AND PASSED SENATE 9-30-82)

TITLE X - VIOLENT CRIME AMENDMENTS (CONTINUED)

MISCELLANEOUS TITLE CONSISTING OF 13 IMPROVEMENTS IN FEDERAL LAWS AS FOLLOWS:

--FEDERAL JURISDICTION OVER MURDER-FOR-HIRE AND CRIMES IN AID OF RACKETEERING ACTIVITY;

--SOLICITATION TO COMMIT A CRIME OF VIOLENCE;

--STRENGTHENING OF THE FEDERAL FELONY-MURDER RULE;

--MINIMUM MANDATORY SENTENCES FOR USE OF FIREARMS IN THE COURSE OF FEDERAL CRIMES;

--CRIMINAL PENALTIES FOR KIDNAPPING OF FEDERAL OFFICIALS;

--CRIMINAL PENALTIES FOR CRIMES DIRECTED AT FAMILY MEMBERS OF FEDERAL OFFICIALS;

--ADDITION OF THE CRIMES OF MAIMING AND SODOMY TO THE MAJOR CRIMES ACT;

--STRENGTHENING OF PENALTIES FOR VIOLENCE DIRECTED AT INTERSTATE TRUCKERS;

--IMPROVEMENTS IN FEDERAL LAWS TO PROTECT ENERGY FACILITIES;

--EXPANSION OF THE LIST OF OFFICIALS PROTECTED BY THE FEDERAL ASSAULT STATUTE;

--CRIMINAL PENALTIES FOR ESCAPE FROM CIVIL COMMITMENT; AND

--COMPREHENSIVE AMENDMENTS TO THE PROCEDURES GOVERNING EXTRADITION OF FOREIGN CRIMINALS FOUND IN THE UNITED STATES.

TITLE XI - SERIOUS NON-VIOLENT OFFENSES IS A COMPILATION OF 9 MISCELLANEOUS AMENDMENTS TO STRENGTHEN FEDERAL LAWS GOVERNING SERIOUS BUT NON-VIOLENT CRIMES INCLUDING:

--PRODUCT TAMPERING;

TITLE XI - SERIOUS NON-VIOLENT OFFENSES (CONTINUED)

--CHILD PORNOGRAPHY;

--OBSTRUCTION OF JUSTICE BY GIVING WARNING OF THE IMPENDING EXECUTION OF A SEARCH WARRANT;

--FRAUD AND BRIBERY RELATED TO FEDERAL PROGRAMS;

--COUNTERFEITING OF STATE AND CORPORATE SECURITIES AND FORGED ENDORSEMENTS OF FEDERAL SECURITIES;

--RECEIPT OF STOLEN BANK PROPERTY;

--BRIBERY RELATED TO FEDERALLY REGULATED BANKS;

--BANK FRAUD; AND

--POSSESSION OF CONTRABAND IN PRISON.

TITLE XII - PROCEDURAL AMENDMENTS IS A SERIES OF 7 PROCEDURAL AMENDMENTS TO FEDERAL CRIMINAL JUSTICE LAWS AS FOLLOWS:

--PROSECUTION OF CERTAIN JUVENILES AS ADULTS;

--WIRETAP AMENDMENTS;

--EXPANSION OF VENUE FOR THREAT OFFENSES;

--INJUNCTIONS AGAINST FRAUD;

--GOVERNMENT APPEAL OF POST-CONVICTION NEW TRIAL ORDERS;

--WITNESS SECURITY PROGRAM IMPROVEMENTS;

--CLARIFICATION OF VENUE FOR CERTAIN CRIMINAL TAX PROSECUTIONS;

APPENDIX V

CONFERENCE ON JUVENILE REPEAT OFFENDERS
DECEMBER 8, 1983
ADULT EDUCATION CENTER
COLLEGE PARK, MARYLAND

Morning		Location
7:30-8:45	Registration and Coffee	Main Concourse
8:45	WELCOME AND ORIENTATION	Auditorium

Dr. Charles F. Wellford, Director, Institute of Criminal Justice and Criminology, University of Maryland at College Park

Chief Cornelius J. Behan, Baltimore County Police Department; Chair, Maryland Repeat Offender Task Force

Dr. Clementine L. Kaufman, Chair, Maryland Juvenile Justice Advisory Committee

Mr. Richard W. Friedman, Executive Director, Maryland Criminal Justice Coordinating Council

9:15 IMPLICATIONS OF RECENT RESEARCH ON JUVENILE REPEAT OFFENDERS

Dr. Charles F. Wellford, Director, Institute of Criminal Justice and Criminology, University of Maryland at College Park

Dr. Marvin E. Wolfgang, Director, Center for Studies in Criminology and Criminal Law, University of Pennsylvania

10:15 Break (Coffee Available) — Main Concourse

10:30 DILEMMAS IN THE CLASSIFICATION AND TREATMENT OF REPEAT JUVENILE OFFENDERS: THE MASSACHUSETTS EXPERIENCE — Auditorium

Dr. Lloyd E. Ohlin, Tarouff-Glueck Professor of Criminology, Harvard Law School

11:15 JUVENILE REPEAT OFFENDERS AND THE "SYSTEM"

Mr. Allen F. Breed, former Director, National Institute of Corrections, U.S. Department of Justice

Afternoon		Location
12:00	LUNCHEON	Chesapeake/Fort McHenry Room (First Floor)

Luncheon address by Mr. Alfred S. Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice

2:00 PANEL WORKSHOPS

A. Defining and Identifying the Juvenile Repeat Offender. Volunteer Firefighters Room (Second Floor)

To address: the legitimacy of the term "juvenile repeat offender" given the philosophy of the juvenile justice system; the incidence of serious repeat offenses on the part of individual juveniles; the criteria for identifying a juvenile as a "repeat offender"; "labeling theory" and the concept of "self-fulfilling prophecy".

Moderator: Dr. Charles F. Wellford, Director, Institute of Criminal Justice and Criminology, University of Maryland at College Park

Panelists: Judge Douglas H. Moore, Jr., Presiding Judge, Juvenile Court, Montgomery County (Maryland)

Dr. Wolfgang Pindur, National Field Manager, Juvenile Serious Habitual Offender/Drug Involved Program; Professor, Old Dominion University

Mr. Rex C. Smith, Director, Maryland Juvenile Services Administration

B. Preventing Juveniles from Repetitive Delinquencies. Room 1105 (First Floor)

To address: the efficacy of restitution programs, community service programs, and other alternatives to commitment for the "pre-chronic" juvenile delinquent; early intervention strategies to deal with the "pre-chronic" juvenile offender on the part of the juvenile justice system, the schools, and the families; the reasons for recidivism after early intervention has occurred; the contribution of families to the development of delinquency (abuse? neglect? etc.) and to the success of rehabilitation.

Moderator: Mr. Eddie Harrison, Director, Justice Resources, Inc., Baltimore

Afternoon		Location
	Panelists: Lt. Charles Codd, Baltimore City Police Department Dr. Margaret Ensminger, Professor, School of Hygiene and Public Health, The Johns Hopkins University Dr. Gary D. Gottfredson, Professor, Center for Social Organization of Schools, The Johns Hopkins University Ms. Dorothy G. Siegel, Vice-President, Towson State University	
3:15	Break (Refreshments Available)	Main Concourse
3:30	PANEL WORKSHOPS	
	C. Legal and Administrative Access to and Use of Juvenile Records. To address: the implications of information-sharing involving juvenile repeat offenders given the juvenile justice system's dual purposes (protect the child and protect society); information-sharing involving juvenile repeat offenders between juvenile and adult authorities (what is the value of information-sharing? what should be shared and why? what should not be shared and why? should/can juvenile records be introduced at adult bail hearings?); the practical difficulties in maintaining and using juvenile records; from the perspective of the legislature, issues surrounding information-sharing such as confidentiality and use and admissability of records.	Volunteer Firefighters Room (Second Floor)
	Moderator: Ms. Catherine H. Conly, Chief of Research and Statistics, Maryland Criminal Justice Coordinating Council	
	Panelists: Honorable Joseph E. Owens, Maryland House of Delegates Mr. Alexander J. Palenscar, Deputy State's Attorney, Baltimore Ms. Natalie H. Rees, Professor, University of Baltimore Law School	

Afternoon — Location

D. The Treatment of Juvenile Repeat Offenders. To address: the rate at which juvenile repeat offenders become adult offenders; the efficacy of the current juvenile justice system sanctions against juvenile repeat offenders; the utility of the waiver to adult criminal court; the utility of other alternatives (e.g. youthful offender institutions, etc.). — Room 1105 (First Floor)

Moderator: Mr. Frank A. Hall, Secretary, Maryland Department of Public Safety and Correctional Services

Panelists: Ms. Donna Hamparian, Co-director, Foundation for Community Planning, Ohio Serious Offender Project

Mr. Tom James, Director, New Pride Alternative School, Denver

Judge Edgar P. Silver, Circuit Court for Baltimore City

Technical Assistance: Mr. Jesse E. Williams, Jr., Deputy Director, Maryland Juvenile Services Administration

4:45 CLOSING REMARKS: THE NATIONAL SCENE — Auditorium

Mr. R. Thomas Parker, Executive Vice-President, National Criminal Justice Association

5:15 ADJOURNMENT

CONFERENCE STAFF

Ms. Sally F. Familton, Maryland Criminal Justice Coordinating Council
Ms. Rebecca P. Gowen, Maryland Criminal Justice Coordinating Council
Mr. Kenneth D. Hines, Maryland Criminal Justice Coordinating Council and Juvenile Justice Advisory Committee
Mr. Kai R. Martensen, Baltimore County Police Department

APPENDIX VI

CONFERENCE ATTENDEES

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